

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**DOCKET NO.: 05-11323 MLW**

**CRYSTAL A. ATHERTON**  
**Plaintiff,**

**V.**

**CITY OF BEVERLY, WILLIAM F. SCANLON, JR., in his official and individual capacity and JOHN DUNN, in his official and individual capacity**  
**Defendants.**

## PLAINTIFF'S LOCAL RULE 56.1 STATEMENT OF FACTS

Plaintiff, Crystal Atherton (hereinafter “Atherton”), hereby submits this Statement of Facts pursuant to Local Rule 56.1 in support of her Motion for Partial Summary Judgment as to Liability:

1. Crystal A. Atherton (“Atherton”) is the plaintiff in this matter. (Complaint, passim)  
Atherton began her employment with the City as Legal Secretary/Paralegal to the City Solicitor on February 1, 1987. (Exhibit 1, Deposition of Crystal A. Atherton, p. 11, hereinafter “Ex. 1, Atherton, p. \_\_”) In or about June 1997, Atherton became Assistant to the City’s Purchasing Agent, and on October 28, 2002, she moved to the Mayor’s Office as Executive Secretary to Mayor Thomas Crean (“Crean”). Atherton held that position until she was terminated in January 2004, Defendant, William F. Scanlon (hereinafter “Mayor” or “Scanlon”). (Ex. 1, Atherton, pp. 12-13).
2. The City of Beverly (hereinafter “City”) is a municipal corporation, duly organized under the laws of the Commonwealth of Massachusetts. (Complaint, passim)
3. Scanlon is the Mayor for the City. Scanlon previously served as Mayor from 1994 until 2001. Scanlon was re-elected as Mayor and took office again in January 2004. (Exhibit 2, Deposition of William F. Scanlon, p. 8, hereinafter “Ex. 2, Scanlon, p. \_\_”)
4. The voters of the City approved a Home Rule Charter (“Charter”) in 1995. (Exhibit 3, A

copy of the entire City of Beverly's Home Rule Charter is attached hereto)

5. Section 3-3 of the Charter provides that: "[t]he mayor shall appoint, subject to the review of such appointments by the city council as provided in section 2-10, all city officers, department heads and the members of multiple-member bodies for whom no other method of appointment or selection is provided by the charter, excepting only persons serving under the school committee, and persons serving under the city council. Except as may otherwise be required by the civil service law, appointments made by the mayor shall be for periods not to exceed three (3) years, provided, however, the mayor may appoint the head of department related to the public safety for a term of not less than three (3) nor more than five (5) years. The mayor may suspend or remove any person appointed by the mayor in accordance with the procedure established in section 3-4. The decision of the mayor in suspending or removing a department head shall be final. All persons categorized as department heads shall, subject to the consent of the mayor, appoint all assistants, subordinates and other employees of the agency for which such person is responsible. The department head may suspend or remove any assistant, subordinate or other employee of the agency for which such person is responsible in accordance with the procedures established in section 8-15. The decision of the department head to suspend or remove any assistant, subordinate or other employee shall be subject to review by the mayor. A person for whom a department head has determined a suspension or removal is appropriate may seek review of such determination by the mayor by filing a petition for review, in the office of the mayor, in writing, within ten (10) days following receipt of notice of such determination. The review by the mayor shall follow the procedures of section 8-15. The decision of the mayor shall be final." (Ex. 3, Charter, Sec. 3-3)
6. Section 3-4 of the Charter provides, in part, that: "(a) In general: The mayor may, in writing, remove or suspend any city officer, member of a multiple member body, or the head of any city department appointed by the mayor by filing a written statement, with the

city clerk, setting forth in precise detail the specific reasons for such removal or suspension. A copy of the written statement shall be delivered in hand, or mailed by certified mail, postage prepaid, to the last known address of the said city officer, member of a multiple member body, or head of a department. The said city officer, member of a multiple member body, or head of a department may make a written reply by filing such a reply statement with the city clerk, within ten (10) days following the date the statement of the mayor has been filed; but, such reply shall have no effect upon the removal or suspension unless the mayor shall so determine. The said city officer, member of a multiple member body, or head of a department may request permission to appear at a public meeting of the city council to read the written reply concerning removal or suspension. If permission for said city officer, member of a multiple member body, or head of a department to attend a meeting of the city council is granted for such purpose, the mayor may attend the same meeting to read the statement of removal or suspension filed by the mayor in the first instance. The city council shall have no authority to vote or otherwise express its views concerning such removal or suspension.” (Ex. 3, Charter, Sec. 3-4)

7. Section 5-3 of the Charter provides that “[a]ll appointments and promotions of city officers and employees shall be made on the basis of merit and fitness demonstrated by examination, past performance, or by other evidence of competence and suitability. Each person appointed to fill an office or position shall be a person especially fitted by education, training and previous work experience to perform the duties of the office or position for which chosen.” (Ex. 3, Charter, Sec. 5-3)
8. Section 8-15 of the Charter provides, in relevant part, that “[a]ny employee of the city, not a city officer or a department head (hereafter “such person”) and not subject to the provisions of the civil service law, or covered by the terms of a collective bargaining agreement which provides a different method, and whether appointed for a fixed or an

indefinite term, may be suspended or removed from office by the appointing authority for good cause. The term “cause” shall include, but not be limited to the following: inefficiency, insubordination, conduct unbecoming the office and incapacity, other than temporary illness . . . The appointing authority when removing any such person shall act in accordance with the following procedure:

- (a) A written notice of the intent to remove and a statement of the cause or causes therefore shall be delivered in hand or by certified mail to the last known address of the person sought to be removed.
- (b) Within five (5) days of delivery of such notice, the officer or employee of the city may request a public hearing at which such person may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing.
- (c) Between one (1) and ten (10) days after the public hearing is adjourned, or if the officer or employee of the city fails to request a public hearing, between six (6) and fifteen (15) days after delivery of the notice of intent to remove, the appointing authority shall take final action, either removing such person, or, notifying such person that the notice is rescinded. Failure of the appointing authority to take any action within the time period as stated in this section shall be deemed to be a rescission of the original notice and the officer or employee shall, forthwith, be reinstated. Nothing in this section shall be construed as granting a right to such a hearing to a person who has been appointed for a fixed term when that term of office expires and such person is not [sic] reappointed for another term of office.” (Ex. 3, Charter, Sec. 8-15)

9. Section 3-313 of the Ordinances entitled, “Confidential Secretary/Administrative Assistant to the Mayor,” provides, in its entirety: “(a) Establishment – There shall be a Confidential Secretary/Administrative Assistant to the Mayor. (b) Mode of Appointment, Term of Office – The Confidential Secretary/Administrative Assistant to the Mayor shall be appointed by and responsible only to the Mayor. The Confidential Secretary/Administrative Assistant shall serve at the pleasure of the Mayor. (c) Authorities and Responsibilities - The Confidential Secretary/Administrative Assistant to the Mayor shall have the following duties: (1) Organize and summarize information and prepare it for the Mayor’s review and action; (2) Meet with department heads regarding day-to-day business, expediting administrative interaction between the Mayor’s office

and City departments; (3) Serve as a officer liaison between the Mayor, the media, public interest groups, businesses and residents; (4) Be familiar with all aspects of the City government and with the functions and activities of the various offices and employees of the City; (5) Be familiar with the various services rendered by the City to its residents, in order that callers can be informed of the extent of these services and of the schedule for their performance; (6) Review all correspondence received in the office of the Mayor, and arrange for its routing and for assembling the materials needed by the Mayor to respond to all such correspondence; (7) Answer all telephone calls placed to the office, respond in an appropriate fashion and direct as appropriate.” (Ex. 4, Ordinance, Sec. 3-313)

10. In or about mid-December 2003, Scanlon called Atherton at home and informed her that it was his intention not to keep her in the position of Confidential Secretary to the Mayor. Scanlon asked Atherton to retire and threatened to discharge her if she refused to resign. (Ex. 1, Atherton, pp. 29-31, 72). Atherton responded that she did not wish to retire and wanted to continue working and earning money for retirement. Atherton asked Scanlon if he could assign her to the School Department or another job in the City. Atherton also told Scanlon that she did not think he had the power under the Charter to terminate her employment. (Ex. 1, Atherton, pp. 29-31, 55)
11. On or about December 17, 2003, Scanlon sent Atherton a letter via certified mail, which indicated that as of January 5, 2004, it was his intention to remove her from her position based by the Mayor. The letter offered Atherton the opportunity to resign prior to that date. (Ex. 1, Atherton, pp. 34, 55-56; Ex. 2, Scanlon, pp. 13-14; Exhibit 5, Scanlon Letter to Atherton, dated December 17, 2003, hereinafter “Ex. 5, Scanlon 12/17/03 Letter”) Scanlon wrote this letter to ask Atherton to resign from her position as Executive Secretary to the Mayor and to inform her that if she did not she would be removed. (Ex. 2, Scanlon, pp. 14-15) Scanlon did not send Atherton a copy of the Charter with this letter. (Ex. 2, Scanlon, p. 25) According to the Mayor, the Executive Secretary’s position

was appointed by the Mayor and could be removed or changed by the Mayor, and Scanlon believed that he had the right to request Atherton's resignation and to replace her. (Ex. 2, Scanlon, pp. 14, 28, 31) Scanlon did not include a reason for Atherton's removal in this letter. One of the reasons that Atherton was not hired for the position of secretary was due to her political affiliations with the previous Mayor. (Ex. 2, Scanlon, p. 22-23, 73).

12. Atherton failed to resign after Scanlon asked her to do so, which Scanlon considered to be insubordination and that was also one of the reasons that she was removed from her position. (Ex. 2, Scanlon, p. 94)
13. On or about December 31, 2003, Atherton sent Scanlon a letter, indicating that she had received his letter, dated December 17, 2003, that she did not intend to resign, and that she did not believe that she was subject to removal under the Charter, except possibly for cause. Atherton further indicated that she had decided to take three weeks of vacation and would return to work on January 20, 2004. (Ex. 1, Atherton, p. 35; Exhibit 6, Letter from Atherton to Scanlon, dated December 31, 2003, hereinafter "Ex. 6, Atherton 12/31/03 Letter")
14. Scanlon remembers receiving Atherton's December 31, 2003 letter, reading it, and filing it, without taking any further action on her request for a hearing pursuant to § 8-15 of the Charter. (Ex. 2, Scanlon, p. 17)
15. On or about January 5, 2004, after taking office, Scanlon sent a letter to the City Clerk regarding the removal of Atherton from the positions of the Mayor's Confidential Secretary, in accordance with Sections 3-3 and 3-4 of the Charter and Section 3-313 of the Ordinances, and from the position of Clerk to the City's Licensing Board, in accordance with Sections 3-3 and 3-4 of the Charter. Scanlon desired to fill these positions with a person of his own choosing and in whom he had faith and confidence would perform the duties of such positions in an exemplary fashion. The letter further

indicated that the removal was effective immediately. Atherton was sent a copy of this letter by certified mail. (Ex. 1, Atherton, p. 35; Ex. 2, Scanlon, pp. 28, 38-39, 92; Exhibit 7, Scanlon letter to City Clerk, dated January 5, 2004, hereinafter “Ex. 7, Scanlon 1/5/04 Letter”) This letter made no reference to Section 8-15 of the Charter.

16. On or about January 12, 2004, Atherton sent Scanlon a letter, which indicated she had received his January 5, 2004 letter. Atherton requested a public hearing pursuant to Section 8-15 of the Charter and a hearing “as otherwise allowed or required by law.” (Ex. 1, Atherton, pp. 38-39; Exhibit 8, Atherton letter to Scanlon, dated January 12, 2004, hereinafter “Ex. 8, Atherton 1/12/04 Letter”) Atherton looked at the Charter and believed that she complied with the timeframe for requesting a hearing. (Ex. 1, Atherton, p.39)
17. In January 2004, Scanlon replaced Atherton with Linda Giallongo (“Giallongo”), who had held the Executive Secretary’s job for more than 20 years prior to Atherton. (Ex. 3, Scanlon, pp. 36, 81; Ex. 9, Linda Giallongo Deposition, pp. 7-8)
18. As Secretary to the Mayor Scanlon, Giallongo has not attended meetings in place of the Mayor or represented the Mayor at functions. (Ex. 9, Giallongo, p. 22) Giallongo attends meetings and hearings with Scanlon to take notes. (Id.) Giallongo does not give advice to the Mayor other than matters involving the licensing board. (Ex. 9, Giallongo, pp. 22-24). Giallongo answers the telephone and takes messages, interacts with Department Heads and City employees and communicates messages to these individuals on behalf of Scanlon, processes payroll, pays bills, files forms when she receives money, files documents, handles checks for copies and for licenses, drafts and types communications for Scanlon, types information for constituents and telephones constituents with requested information, speaks to Department Heads and other individuals, including members of the public, when they come into or telephone the Mayor’s office, and sometimes signs documents for Scanlon using her initials, when she has his permission. (Ex. 9 Giallongo Dep., pp. 22-32, 43). Giallongo keeps Scanlon’s calendar and schedules all of his

appointments (Ex. 9 Giallongo Dep., p. 49)

19. The Mayor's secretary does not serve as a liason between the mayor, media, public interest groups, business and residents although this is listed a job responsibility in § 3-313. The latter was a function of the administrative assistant and Mayor Scanlon now takes care of those functions. (Ex. 9 Giallongo Dep., p. 31)

Respectfully Submitted,

CRYSTAL A. ATHERTON

By her Attorney,

/s/ Jordan L. Shapiro  
Jordan L. Shapiro  
BBO#454240  
Shapiro & Hender  
640 Main Street  
Malden, MA 02148  
(781) 324-5200

DATED: March 14, 2008



# Exhibit 2

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11323MLW

CRYSTAL A. ATHERTON and ROBERT W.  
ATHERTON,

Plaintiffs,

vs.

CITY OF BEVERLY, WILLIAM F. SCANLON, in  
his official and individual capacity,  
and JOHN DUNN, in his official and  
individual capacity,  
Defendants.

DEPOSITION OF WILLIAM F. SCANLON, JR.,  
taken pursuant to Notice under the applicable  
provisions of the Federal Rules of Civil  
Procedure on behalf of the Plaintiffs, before  
Simonne J. Elwood, R.F.R. and a Notary Public  
in and for the Commonwealth of Massachusetts,  
at Beverly City Hall, 191 Cabot Street,  
Beverly, Massachusetts, commencing on  
Wednesday, September 12, 2007 at 11:01 a.m.

NEAL A. SULLOWAY - COURT REPORTERS

ONE CANNON ROAD

WEST PEABODY, MA 01988

781-881-0880 - 878-833-0313 - FAX 878-838-3142

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APPEARANCES:

JORDAN I. SHAPIRO, ESQ.

ERIC SHWARTZ, ESQ.

SHAPIRO & HENDER

640 MAIN STREET

MALDEN, MA 02148

REPRESENTS THE PLAINTIFFS

ELIZABETH CORBO, ESQ.

KUPELMAN & PAIGE

101 ARCH STREET - 12TH FLOOR

BOSTON, MA 02110

REPRESENTS THE DEFENDANTS

ROBERT A. MUNKUE, ESQ.

ASSISTANT CITY SOLICITOR

CITY OF BEVERLY

191 CABOT STREET

BEVERLY, MA 01915

REPRESENTS THE DEFENDANTS

ALSO PRESENT: CRYSTAL A. ATHERTON  
ROY GELINEAU

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**STIPULATIONS**

It is hereby stipulated and agreed by and between counsel for the respective parties that all objections, except as to form, are reserved until the time of trial, including motions to strike.

It is further stipulated and agreed that the reading and signing of the deposition are not waived and to be read and signed under the pains and penalties of perjury.

It is further stipulated and agreed that the filing and sealing of the deposition are waived.

WILLIAM F. SCANLON, JR.

A witness called on behalf of the Plaintiffs, having been satisfactorily identified by the production of his Massachusetts driver's license (S73074231) and duly sworn, under oath, by the Court Reporter and Notary Public, was examined and testified as follows:

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please ask me to rephrase my question, and I'll be glad to do that.

It would be helpful if you wait until I finish my question before you start your answer because the stenographer can't record two people talking at the same time. And you do have to answer verbally; yes' and no's rather than uh-huh's and shaking your head and things like that. Do you understand all that?

A I believe so.

Q Okay. Have you taken any drugs or medicine, or are you -- have you had any alcohol this morning that will affect your ability to answer my questions this morning?

A No.

Q Could you tell me -- Again, I know you've been through this before, but for this deposition, I have to ask you again.

Can you trace for me what your education has been since you got out of high school just in a general sort of way?

A Bachelor of Science in Civil Engineering from

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MR. SHAPIRO: Usual stipulations?

MS. CORBO: Yes.

MR. SHAPIRO: The same as the last deposition.

MS. CORBO: Yes.

DIRECT EXAMINATION

Q (By Mr. Shapiro) Could you tell me what your full name is, please, sir?

A William Francis Scanlon, Junior.

Q And what is your home address?

A 5 Whitman Place, Beverly.

Q And what is your occupation?

A Mayor of the City of Beverly.

Q And I know you've been deposed before because I deposed you one time before; but just so that you'll refresh your memory about some of the rules is that I ask you a question, and you give me an answer, I'll assume that you understood what the question was.

If I ask you a question you don't understand or you want me to repeat or do something about it that you're not clear on,

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the Massachusetts Institute of Technology, Master's in Business Administration from Harvard University.

Q And when did you get the degree from MIT?

A 1961.

Q And from Harvard?

A 1967.

Q And could you trace for me what your work experience has been in a general kind of way since you got out of high school? Well, not -- Just give me the last 20 years if you can.

A In the last 20 years, I ran a consulting company from 1987 to 1993; Mayor of the City of Beverly from 1994 through 2001; Professor of Business Administration at Endicott College, 2002 and 2003; Mayor of the City of Beverly, 2004 to today.

Q Can you tell me what you did to prepare for today's deposition?

A I took a look at the interrogatories. I marked on my calendar that we would have this today. That's about it.

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1 Q Okay. Could you tell me when the first time  
2 was that you met Crystal Atherton or came to  
3 know her, approximately?  
4 A **It would have to have been early 1994.**  
5 Q And what was she doing when -- What was her  
6 job when you first met her?  
7 A **I believe she was working with the city**  
8 **solicitor.**  
9 Q Who was the city solicitor around that time,  
10 do you know?  
11 A **Marshall Handly.**  
12 Q Have you had an opportunity to look at  
13 Crystal Atherton's personnel records, her  
14 files at all?  
15 A **No, no.**  
16 Q Do you know whether she has ever been  
17 disciplined for anything?  
18 A **In terms of formal discipline, I do not.**  
19 Q Do you know whether she's ever had anything  
20 in her record that was in any way derogatory  
21 or negative?  
22 A **As I said, I have not looked at her record.**  
23 Q Nothing that you're aware of that people

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W. SCANLON, JR.

1 changing --  
2 A **I believe he had.**  
3 Q All right. And do you know what she did as a  
4 result of those discussions?  
5 A **No.**  
6 Q She never worked for you in your office, is  
7 that right?  
8 A **That's right.**  
9 Q Now, prior to terminating her in January of  
10 '04, had you looked at her personnel file to  
11 see if there was anything derogatory in it,  
12 sir?  
13 A **As I've said, I think twice now, I did not**  
14 **look at her personnel file.**  
15 Q Okay. Now, your counsel has provided to me a  
16 document which I'll mark as Exhibit 1.  
17 (Whereupon the Court Reporter marked  
18 as Exhibit No. 1 - Proposed City Organization  
19 Chart.)  
20 Q What I've shown to you is something called  
21 the, "Proposed City Organization Chart." Is  
22 that a fair depiction of the city  
23 organization chart in your opinion?

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1 complained about her attendance or promptness  
2 In getting to or from work, is that a fair  
3 statement?  
4 A **I'll go with a yes on that.**  
5 Q And insofar as your discussions with Marshall  
6 Handly about her ability to do her job in a  
7 reasonable manner, did you ever have any  
8 discussions with him about that?  
9 A **Certainly, there were some discussions about**  
10 **that, yes.**  
11 Q And can you tell me approximately when was  
12 the first time that you and Marshall ever  
13 talked about Ms. Atherton?  
14 A **No, I can't be specific on that. I can**  
15 **recall that she had very unusual filing**  
16 **systems that were the subject of discussion.**  
17 Q And is that something that you had ever  
18 talked with her about?  
19 A **That I had talked to her about?**  
20 Q Yes.  
21 A **No.**  
22 Q Do you know whether Marshall Handly ever  
23 talked with her about correcting or

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1 (Indicating)  
2 A **At a point in time, yes.**  
3 Q Is that a fair depiction of what existed in  
4 the 2003/2004 period to the best of your  
5 memory?  
6 A **2003/2004. That's a little confusing. I was**  
7 **not here in 2003.**  
8 Q Okay. How about in 2004?  
9 A **It's not totally correct, sir.**  
10 Q Okay. The only reason I'm showing that to  
11 you, are there and were there -- Let me  
12 strike that question.  
13 Beginning in 2004 when you came back  
14 as the Mayor, were there around ten  
15 department heads as is shown here underneath  
16 the Mayor box?  
17 A **The number, I believe, would have been one**  
18 **larger than what shows here, so that's around**  
19 **ten.**  
20 Q Okay. Very good. And are those ten  
21 department heads, to the best of your  
22 knowledge, persons that you appoint from the  
23 Mayor's office, do you know?

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- 1 **A** Are those positions ones that I appoint?  
 2 **Q** Yes.  
 3 **A** I believe so.  
 4 **Q** Okay.  
 5 MR. SHAPIRO: Mark this next one as  
 6 Exhibit 2.  
 7 (Whereupon the Court Reporter marked  
 8 as Exhibit No. 2 - Letter - 12/17/03 to Ms.  
 9 Crystal Atherton from William F. Scanlon,  
 10 Jr.)  
 11 **Q** Okay. All right. Now, I've put in front of  
 12 you a letter dated December 17, 2003 and ask  
 13 you: Is that your signature on the bottom,  
 14 sir? (Indicating)  
 15 **A** It is.  
 16 **Q** And when was the last time you looked at this  
 17 letter?  
 18 **A** I honestly don't know. I haven't seen it in  
 19 a long time. That's all I can tell you.  
 20 **Q** You haven't looked at it today or yesterday  
 21 or in the last few days?  
 22 **A** No, no.  
 23 **Q** Okay. And do you remember preparing this

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- 1 that, she would be removed.  
 2 **Q** Okay. And could you tell me: In the month  
 3 of January of '04 whether there were any  
 4 other people that you sent similar letters to  
 5 that worked for the City of Beverly?  
 6 **A** I believe I did send some other letters, yes.  
 7 **Q** And to who were those sent, please?  
 8 **A** I'm not certain I can articulate all of  
 9 the to whoms to you right now. I believe one  
 10 of them would be Tom L'Italien, and there may  
 11 be two or three others.  
 12 **Q** Were there any other secretarial positions  
 13 that you sent similar letters to, sir?  
 14 **A** I don't believe so.  
 15 **Q** Approximately how many others were sent  
 16 similar letters, sir?  
 17 **A** It's an estimate. I'm going to say in  
 18 addition to this letter, perhaps three  
 19 others.  
 20 **Q** Do you have any memory whether of the four  
 21 letters that were sent out how many were  
 22 women?  
 23 **A** Possibly two, but I'm not certain at this

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- 1 letter at all?  
 2 **A** Yes.  
 3 **Q** And could you tell me if the position -- What  
 4 was the position that she held as of January  
 5 5th, '04, do you know?  
 6 **A** It was the executive secretary to the Mayor.  
 7 I believe.  
 8 **Q** And was that a position that the Mayor's  
 9 office appointed?  
 10 **A** I believe so.  
 11 **Q** And is that a position that the Mayor's  
 12 office also removed?  
 13 **A** Well, or changed, perhaps would be -- I'm not  
 14 sure.  
 15 **Q** Okay. Or changed?  
 16 **A** Yeah.  
 17 **Q** Yes?  
 18 **A** Yes.  
 19 **Q** Okay. And this letter was to remove her from  
 20 the position as a secretary in the Mayor's  
 21 office, isn't that right?  
 22 **A** Well, it was written to ask her to resign the  
 23 position and indicated that should she not do

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- 1 moment.  
 2 **Q** Now, prior to your sending out this letter,  
 3 can you tell me what your memory is of what  
 4 her various positions were that she held  
 5 while employed by the City of Beverly?  
 6 **A** "Her" being?  
 7 **Q** Ms. Atherton.  
 8 **A** She worked in the Purchasing Department as  
 9 assistant to the purchasing agent, I believe,  
 10 after having worked in the legal department.  
 11 **Q** Okay. And then she moved from there into the  
 12 Mayor's office, is that what your memory and  
 13 understanding is?  
 14 **A** Well, again, that didn't happen while I was  
 15 here, but that is my understanding.  
 16 **Q** So she was hired into the Mayor's office by  
 17 Mr. Crean, is that your memory?  
 18 **A** Yes.  
 19 **Q** And that's where she was when you arrived as  
 20 the Mayor, isn't that right?  
 21 **A** Yes.  
 22 MR. SHAPIRO: Mark that as Exhibit 3,  
 23 please.

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W. SCANLON, JR.

1 (Whereupon the Court Reporter marked  
2 as Exhibit No. 3 - Letter - 12/31/03 to Mayor  
3 Elect Scanlon from Crystal A. Atherton.)  
4 Q Okay. Now, I put in front of you Exhibit 3,  
5 a letter dated December 31st, 2003 from  
6 Crystal Atherton to William F. Scanlon,  
7 Junior and ask you if you remember receiving  
8 that letter? (Indicating)  
9 A I do.  
10 Q And when you received that letter, what did  
11 you do?  
12 A I read it, and I filed it.  
13 Q Okay. Now, she, in that letter, indicates in  
14 the second line, "As I told you in our  
15 telephone conversation, --," that line  
16 begins. Do you remember the conversation  
17 that you had with her that she's referring  
18 to?  
19 A I remember a few words of a conversation with  
20 her in person, not by telephone.  
21 Q Okay.  
22 A And I thought at the time that the letter  
23 said a lot more than the bit of conversation

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1 you recognize that as a copy of the City  
2 Charter page that has in it Section 8-15?  
3 A Uh-huh. It appears to be the Charter.  
4 Q Okay. And I'm going to read that first  
5 sentence. If you don't mind, actually, I'm  
6 going to read the first sentence. "Any  
7 employee of the city, not a city officer or a  
8 department head (hereafter 'such person') and  
9 not subject to the provisions of the civil  
10 service law, or covered by the terms of a  
11 collective bargaining agreement which  
12 provides a different method; and whether  
13 appointed for a fixed or an indefinite term,  
14 may be suspended or removed from office by  
15 the appointing authority for good cause. The  
16 term 'cause' shall include, but not be  
17 limited to the following: inefficiency,  
18 insubordination, conduct unbecoming the  
19 office and incapacity, other than temporary  
20 illness."  
21 She was an employee of the city,  
22 correct?  
23 A Yes.

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1 we had.  
2 Q Can you tell me about the conversation that  
3 you had?  
4 A Little except that it was very cryptic, and  
5 she pointed out that she wouldn't resign.  
6 Q Do you remember anything you said or she  
7 said? What did you say when she said that?  
8 A I don't think I said anything. I just  
9 listened.  
10 Q Did you take a look at the City Charter,  
11 Section 8-15, when you received this letter  
12 also?  
13 A I did not.  
14 Q Have you looked at this section of the City  
15 Charter between December '03 and today, sir?  
16 A I honestly don't know. I read the Charter  
17 from time to time.  
18 MR. SHAPIRO: Okay. Mark that as  
19 Exhibit 4.  
20 (Whereupon the Court Reporter marked  
21 Exhibit No. 4 - The Charter and Related  
22 Laws.)  
23 Q I'm showing to you Exhibit 4 and ask you if

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1 Q And that sentence at the -- The first  
2 sentence says she may be suspended or removed  
3 from office by the appointing authority for  
4 good cause.  
5 MS. CORBO: Objection.  
6 MR. SHAPIRO: I haven't asked the  
7 question yet.  
8 MS. CORBO: It doesn't say that. It  
9 doesn't say that "she" may be removed; it  
10 says, "an employee."  
11 MR. SHAPIRO: Okay. I stand  
12 corrected. Sorry about that. I didn't mean  
13 to confuse anybody by that.  
14 Q Let me read it. Let me say it again. "Any  
15 employee of the city," and then skipping  
16 down, say, "may be suspended or removed from  
17 office by the appointing authority for good  
18 cause."  
19 Now, do you have any reason to believe  
20 that Ms. Atherton was inefficient in her job?  
21 A Well, I certainly do, yes.  
22 Q Okay. And do you have any reason to believe  
23 that she was insubordinate in her job?

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1 A Not quite.  
2 Q Do you feel that she was -- What do you mean  
3 by "not quite"?  
4 A I said, "not quite." I got a chance to  
5 observe Ms. Atherton in her work for a number  
6 of years since her desk was about, oh, maybe  
7 30 feet from mine, and it was an open doorway  
8 between the two. So I had many opportunities  
9 to observe her demeanor, conduct of her work,  
10 etcetera.  
11 Q Okay. Was there anything that she did that  
12 you believed was conduct unbecoming the  
13 office?  
14 A Well, I have observed her, for example, sit  
15 at the desk while the phone in front of her  
16 rang 15 or 18 times, and she didn't answer  
17 it. I have observed her when the phone rang  
18 a dozen or more times, and she got up and  
19 said, "I'm going to lunch," and didn't answer  
20 it. Those are two that stick out in my mind.  
21 Q Anything that indicated any of her activities  
22 that indicated to you that she was -- did not  
23 have the capacity, that there was some

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1 Incapacity of her?  
2 A I have no comment regarding that.  
3 Q Okay. So in regard to inefficiency and  
4 insubordination, conduct unbecoming the  
5 office, you felt that there were some  
6 concerns that you had about those three  
7 issues, is that right?  
8 A Well, certainly on inefficiency; and if I  
9 might, in your reading of this, "The term,  
10 'cause' shall include, but not be limited to  
11 the following." So, apparently, it could be  
12 a much longer list than what is actually  
13 written.  
14 Q Okay. And so when you sent her the letter  
15 that we've marked as Exhibit No. 2, is there  
16 any reason stated in that letter as to the  
17 reason for her removal, sir?  
18 A No. I simply asked her to resign. I thought  
19 it would be simpler. I didn't have trust or  
20 confidence in this lady, and I felt for this  
21 position -- Certainly, my strong perception  
22 was that she was closely aligned with  
23 Mr. Crean. I believe she had been a strong

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1 advocate for him during the election, and  
2 it's an executive secretary position, a  
3 confidential secretary position; and with me,  
4 that simply wasn't a fit.  
5 Q Okay. Well, in fact, the last statement that  
6 you just made was the real reason you didn't  
7 rehire her, isn't it?  
8 MS. CORBO: Objection.  
9 Q Can you answer that question?  
10 A Certainly a reason.  
11 Q Okay. And was it the primary reason that you  
12 didn't rehire her?  
13 MS. CORBO: Could you just clarify?  
14 I'm sorry. What statement are you referring  
15 to because he listed a number of them?  
16 MR. SHAPIRO: The last statement that  
17 he said was that she was strongly aligned  
18 with Mayor Crean.  
19 MS. CORBO: Okay. Thank you.  
20 A I said I didn't have either trust or  
21 confidence in her, and that's probably the  
22 primary reason.  
23 Q Okay. And so insofar as all of this, what we

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1 just went through with regard to her not  
2 being capable and qualified in her duties,  
3 that had nothing to do with your not rehiring  
4 her at all, did it?  
5 A I answered your question before, and I  
6 indicated that I had an unusual opportunity  
7 to observe this woman's work performance  
8 because of where she sat for the year she was  
9 in the legal department; and so I did have,  
10 do have an opinion about that, and it's not a  
11 good opinion.  
12 Q Okay. We'll come back to that. The next  
13 part of the 8-15 refers to, in the second  
14 section, kind of pointing to you here, where  
15 it says, "The appointing authority when  
16 removing any such person shall act in  
17 accordance with the following procedure," and  
18 it has a written notice of the intent to  
19 remove and hearing opportunities and things  
20 like that.  
21 We agree that she did not have an  
22 opportunity for any hearing after she was  
23 terminated, is that right?

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MS. CORBO: Objection. To the extent that you are reading from this document and asking a question under the premise that this section applies to her employment, that's a subject of litigation and a subject in dispute.

And so to the extent that your question is premised on this section applying, I don't think it's a fair question.

MR. SHAPIRO: Okay. Well, I don't think that I had the premise based upon that it applied, in any event, with the question I just asked, and I'd appreciate it if you'd just give objections and not give speaking objections in the future to give him any suggestion about where your position is on my question.

Q So let me just ask you the question again.

Was there any opportunity for her to have a public hearing, that you gave her notice of her opportunity to do that in the letter at least of December 17th, 2003?

A I believe if she wanted to pursue it here, she

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A Well, there are a lot of presumptions in her letter, and I think in what you have just said, I believe I've already answered it. It may be interesting, and I don't know if you know this or not, but this lady was quoted at length in the newspaper when she took that job that she had no protection while she had that job, and she did run the risk of not -- you know, she had been a union member, as I recall, prior to that; and when she took that job, she freely admitted to the newspaper she was no longer in that situation.

So I'm really not quite sure what your question is.

Q Just listen to my question and see if you can answer it. In the -- At the time that you were writing this letter of December 17th of '03, were you thinking that she was a person who was inefficient or insubordinate or had done something, the kind of conduct that was unbecoming of her?

A I certainly thought about her as being inefficient, absolutely; not productive,

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could have attempted to do that with the city council. I don't believe it's a matter with the Mayor. I didn't send her a copy of the Charter if you're asking me that.

Q Well, she responded to you by indicating that it has to be -- the removal must be for cause, and then she said in her letter, "As I also told you in our conversation, I do not have a position to resign from because I am not a city officer or department head but rather a rank and file secretary -- a career public servant who has served a number of administrations, including your earlier administration. As a dedicated public servant with more than 18 years of service and an exemplary employment record, I do not think that 'for cause' termination is an issue."

You certainly weren't intending to give her a notice that you were terminating her for inefficiency, insubordination or anything like that as you wrote that letter of December 17th, were you, sir?

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things like that, yes.

Q Okay. Okay. But as you were writing the letter, had you -- was it your intent that your letter complied with the requirements of Section 8-15?

MS. CORBO: Objection to the extent that your intent in writing the letter is based upon any conversations or instructions you may have received from your counsel at the time, I'm ordering you not to answer that question.

Q Okay. When you wrote this letter, was it your intent to comply with Section 8-15? And I'm not asking you about conversations with your attorney. I'm asking: Was it your intent to comply with Section 8-15?

A I believe I had the right to request her resignation; and failing that, to replace her.

Q Okay. So after you received the letter from her of December 31, 2003, I think you've already answered that you did not look at Section 8-15 before you wrote your



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1 January 5th, 2004 letter, is that right?  
2 **A** I'm not sure what the January 5th letter is.  
3 **Q** That's the letter removing her.  
4 I let me have that marked so you'll have  
5 everything in front of you.  
6 (Whereupon the Court Reporter marked  
7 as Exhibit No. 5 - Letter - 1/5/04 to Mrs.  
8 Frances Macdonald from William F. Scanlon,  
9 Jr.)  
10 **Q** There's the three letters, actually.  
11 MS. CORBO: Do you have a copy of the  
12 January 5th letter for me?  
13 MR. SHAPIRO: Absolutely.  
14 MS. CORBO: Thank you.  
15 **Q** Okay. I've put in front of you your letter  
16 of January 5th, 2004, and you can read that  
17 to yourself and tell me whether that has any  
18 reference at all in that letter to Section  
19 8-15 that I've just had marked as Exhibit 4  
20 [sic].  
21 **A** No, I don't believe it does.  
22 **Q** Okay. And I will ask you one more time. Did  
23 you intend to comply with Section 8-15 when

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1 **A** No, it does not.  
2 **Q** Okay. And now, let me ask you as I wanted to  
3 before: December 31st, 2003 letter, Exhibit  
4 No. 3, before you had looked at that -- No,  
5 let me strike that.  
6 When you sent out the letter of  
7 December 31st, 2003, did you intend to comply  
8 with Section 8-15?  
9 **A** I didn't send out any letter on  
10 December 31st. That's the letter that she  
11 sent.  
12 **Q** I'm sorry. Regarding the letter of  
13 December 17th that you sent out as Exhibit 2,  
14 when you sent out that letter, did you intend  
15 to comply with Section 8-15?  
16 **A** When I sent out the letter of December 17th,  
17 I thought I had the right to request her  
18 resignation; and failing that, I thought I  
19 had the right to replace her, and I still do;  
20 and when I sent out the letter of  
21 January 5th, I was complying with what I said  
22 I would do in the letter of December 17th.  
23 MR. SHAPIRO: Mark this as the next

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1 you wrote the letter of December 17th which  
2 we have marked as Exhibit 2?  
3 MS. CORBO: I have a question for  
4 clarification.  
5 MR. SHAPIRO: Sure.  
6 MS. CORBO: Exhibit 4, was that the  
7 Charter provision or was Exhibit 5 -- I think  
8 you referred to this as Exhibit 4, the letter  
9 marked January 5th, and I think the letter  
10 marked January 5th is actually Exhibit 5.  
11 MR. SHAPIRO: Okay. We want to stand  
12 corrected that the letter of January 5th is  
13 Exhibit No. 5.  
14 **Q** And what I'm asking you, and I want to make  
15 sure that I do ask it correctly is: When you  
16 wrote the letter that is dated January 5th,  
17 that we've marked as Exhibit 5, we agree it  
18 does not refer at all to Section 8-15 in  
19 order -- after your counsel's objection is  
20 clarified, correct?  
21 MS. CORBO: Yes. Okay.  
22 **Q** The letter of January 5th, 2004, Mr. Scanlon,  
23 does not refer to 8-15, is that right?

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1 exhibit.  
2 (Whereupon the Court Reporter marked  
3 as Exhibit No. 6 - Letter - 1/12/04 to  
4 William F. Scanlon, Jr., Mayor from Crystal  
5 A. Atherton.)  
6 **Q** Now, I'm showing you Exhibit 6, and that is a  
7 letter from Crystal Atherton addressed to  
8 Mayor Scanlon, you; and in that letter, the  
9 bottom line says, "Pursuant to Section 8-15  
10 of the Beverly Home Rule Charter, I hereby  
11 request a public hearing and a hearing as  
12 otherwise allowed or required by law." And I  
13 ask you if you received that letter?  
14 (Indicating)  
15 **A** I believe I did.  
16 **Q** And what did you do when you received that  
17 letter?  
18 **A** I read the letter, and I also filed that  
19 letter. The earlier letter indicated that  
20 she was going to take the first three weeks  
21 in January off. I guess she made that  
22 decision summarily. And the Charter calls  
23 for, I believe, any such hearing to be

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coordinated with the city council. It's not a hearing with the Mayor as I recall.

Q Okay. Well, let's take a look at that. Paragraph B of Section 8-15 says, "Within five (5) days of delivery of such notice, the officer or employee of the city may request a public hearing at which such person may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing."

Section C says, "Between one (1) and ten (10) days after the public hearing is adjourned, or if the officer or employee of the city fails to request a public hearing, between six (6) and fifteen (15) days after delivery of the notice of intent to remove, the appointing authority shall take final action, either removing such person, or, noticing such person that the notice is rescinded."

Having looked at that, does that change your view that it's the appointing

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shall be made on the basis of merit and fitness demonstrated by examination, past performance, or by other evidence of competence and suitability. Each person appointed to fill an office or position shall be a person especially fitted by education, training and previous work experience to perform the duties of the office or position for which chosen."

Now, again, let me take a look at your Exhibit 5 and ask you: In looking at Exhibit 5, is there anything in Exhibit 5 that indicates that your reason, the specific reason for this action has anything to do with merit?

A Well, certainly, the replacement of Ms. Atherton fits this section rather neatly in my opinion.

Q Does it say that in your letter of January 5th, 2004?

A Well, in talking about that, I'm talking about the replacements, so I don't think there would be any need for that to be in

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authority that holds the hearing, sir?

A My comment was made on my recollection from the City Charter that any such hearings occur with the city council. I can't swear to that, but that's my recollection.

Q Okay. That's fine. That's all I'm asking you today. Okay. Good.

MR. SHAPIRO: Mark that as the next exhibit, please.

(Whereupon the Court Reporter marked as Exhibit No. 7 - The Charter and Related Laws.)

Q All right. Now, we have had marked as Exhibit 7 another page of the City Charter. Does that appear to be a page of the City Charter? (Indicating)

A It does.

Q And I'm calling your attention to Section 5-3, "Merit principle." Have you looked at that section at all in the last year or so?

A No.

Q And what it indicates is, "All appointments and promotions of city officers and employees

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this letter.

As you probably know, I replaced Ms. Atherton with the person that she had replaced and who had held the job for perhaps 20 years prior to Ms. Atherton taking it over.

Q Okay. Let's take a look at the next section.

MR. SHAPIRO: Mark this as the next exhibit.

(Whereupon the Court Reporter marked as Exhibit No. 8 - Beverly Revised Ordinances.)

Q I'm showing to you an exhibit that I've marked as 8, Section 9-4. Does this also appear to be a page from the Beverly Revised Ordinances? (Indicating)

A It does.

Q And this section I'm sorry. That section says, "Any person holding a city office, or a position in the administrative service of the city, or any person holding full time employment under the city, shall retain such office, or position, or employment, and shall

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continue to perform the duties of such office, position or employment until provision shall have been made for the performance of those duties by another person or agency; provided, however, no person in the permanent full time service of the city shall forfeit his or her pay grade, or time in service of the city. All such persons shall be retained in a capacity as similar to the capacity in which they were serving at the time this charter is adopted as is practical and any reduction in the personnel needs of the city shall be accomplished through a policy of attrition, unless specific provision is otherwise made in this article."

Do you believe you can find with that provision when you removed Ms. Atherton from office?

**A I believe I had the right to have an executive secretary in whom I had confidence and trust; and as I did advise Ms. Atherton, the specific reason for her removal is that I**

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did not want her to continue in the position because you believed you had the right to remove her at the pleasure of the Mayor under this section, isn't that what you relied upon in your prior letter?

**A Well, I believe this is a true statement, sir.**

**Q** Okay. And, in fact, that's what you cited in your Exhibit 5, in your letter of January 5th, '04, is pursuant to Section 3 -- I'm sorry. Section 3-313 of the administrative code in removing her, is that right?

**A Uh-huh.**

**Q** So you were relying upon this section in removing her. And you also refer -- Okay.

So can you tell me: What is the distinction between -- at least in your opinion, what is the distinction between the administrative code and the city ordinances of the Charter, can you give me your views on that for a moment while I digress?

**A The distinction between -- I think, in**

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**desired to fill the position with a person of my own choosing and in whom I have faith and confidence to perform the duties in an exemplary fashion which I would not have had with her.**

MR. SHAPIRO: Well, let's see if we can just mark the next section.

(Whereupon the Court Reporter marked as Exhibit No. 9 - Page 56 - Section 3-313.)

**Q** Now, we have marked as Exhibit 9, Section 3-313 that deals with the position of confidential secretary, administrative assistant to the Mayor. Is that the position that she held with Mayor Crean? (Indicating)

**A I believe so.**

**Q** And what it indicates here at Section B is, "The Confidential Secretary/Administrative Assistant to the Mayor shall be appointed by and responsible only to the Mayor. The Confidential Secretary/Administrative Assistant shall serve at the pleasure of the Mayor."

And so your -- You indicated that you

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**general, the administrative code further amplifies the Charter.**

**Q** Do you think it has equal weight and strength as the -- in enforceability as the ordinances of the Charter?

**A I think it generally gives further definition, further detail beyond the Charter.**

**We looked at something before that you brought out which said, "shall include but not be limited to the following," for example. So that's the way I view this. I do view it as relevant if that's part of your question.**

**Q** Okay. If there were conflicts between the administrative code and an ordinance of the Charter, which one do you believe would take precedence?

**A Well, I'd have to go back to the city solicitor to take a look at that.**

**Q** So you don't have an opinion on that then?

**A I have opinions but, you know, a conflict could exist for a variety of reasons. A**

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1 Charter could be in conflict with state law,  
2 and then administrative codes might be in  
3 accordance with state law. So it's just a  
4 complex question.  
5 Q Okay. Well, what I'm asking you is what your  
6 knowledge and opinion is as to the --  
7 A I don't see here any conflict, personally. I  
8 think the Charter is the primary document if  
9 that's what you're --  
10 Q Okay. And then do you think the ordinance  
11 would take second place in the administrative  
12 code?  
13 A I think the ordinance is generally amplify  
14 and define the detail, that it can't possibly  
15 be in the Charter.  
16 Q Okay. And then what I'm asking you about:  
17 What does the administrative code do in that  
18 case?  
19 MS. CORBO: I'm sorry. What did --  
20 Q What does the administrative code do insofar  
21 as the relationship between the ordinances  
22 and the Charter?  
23 A As I say, it amplifies and defines it.

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1 Q Okay. All right.  
2 MS. CORBO: Could I ask you about how  
3 much time do we have left?  
4 MR. SHAPIRO: Sure. Off the record.  
5 (Whereupon an off-the-record  
6 discussion took place.)  
7 (Lunch break takes place at 11:47  
8 a.m.)  
9 (Back on the record at 1:02 p.m.)  
10 (Eric Schwartz, Esq. is now present.)  
11 Q (By Mr. Shapiro) I want to go over a couple  
12 of things that we touched on this morning.  
13 Do you have any memory of you initiating a  
14 call to Ms. Atherton in the December '03  
15 period to ask her to submit her retirement  
16 papers? Do you remember a conversation like  
17 that at all?  
18 A I don't. I don't.  
19 Q See if this will trigger anything in your  
20 memory. Do you have any memory of having a  
21 conversation with her around that time where  
22 she asked you to help her get another job  
23 somewhere else in the city; does that --

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1 A I do remember a brief conversation with her  
2 in the office across --  
3 Q Okay.  
4 A Not in the Mayor's office but in the outside  
5 office, and I don't recall the specific  
6 content.  
7 Q Okay. Do you remember calling -- Do you have  
8 any memory of calling anybody else who was  
9 terminated in January of '04 by telephone?  
10 A I don't have any memory of calling any of  
11 those persons that way.  
12 Q Okay. All right. Now, with regard to your  
13 memory as to who was terminated, do you  
14 remember Tom L'Italian was terminated?  
15 A I mentioned that, I believe.  
16 Q Yes. Peter Gilmore, the City Solicitor, do  
17 you remember him being terminated?  
18 A Uh-huh. Uh-huh.  
19 Q How about a Deborah Hurlburt?  
20 A Yes.  
21 Q And do you remember what her position was?  
22 A The planning director.  
23 Q And do you remember what the reason was for

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1 terminating her?  
2 A Do I remember what the reason was for  
3 terminating her? Well, I certainly wasn't,  
4 you know, of the view that she was a good  
5 person for that job.  
6 Q She supported Tom Crean, too, isn't that  
7 right?  
8 A I don't know that, but I would assume so. I  
9 don't think she was a Beverly person.  
10 Q Okay.  
11 A So that makes my earlier answer correct  
12 that there were two women. You asked me  
13 about that.  
14 Q How about Robert Vallier (phonetic), was he a  
15 person who was terminated also in January of  
16 '04?  
17 A Yes, and that job was eliminated.  
18 Q Was there a finance director also that was  
19 terminated?  
20 A Certainly, he left and would have been -- I  
21 don't know whether -- or how it worked but,  
22 yes.  
23 Q Do you know if those five people that I just

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1 mentioned were all terminated by you in  
2 January '04?  
3 **A I believe that's correct.**  
4 **Q** Okay. Good. Now, I want to go back for a  
5 little bit. The flaws in Ms. Atherton's  
6 work, for lack of a better word, the problems  
7 that you had with her work -- Strike that.  
8 You had mentioned, prior to this  
9 morning, that you had certain issues, that  
10 you had concerns about her work, is that a  
11 fair statement?  
12 **A** Yes.  
13 **Q** Okay. And some of the issues that you  
14 mentioned were that Mr. Handly and you  
15 were -- had discussions that he -- or you had  
16 observed some problems with her filing  
17 system, was that one of them?  
18 **A** She had filed things in such a way that  
19 others couldn't find them later.  
20 **Q** Exactly. Okay. And then you mentioned also  
21 that you, personally, had seen her doing some  
22 bad things on the telephone, is that --  
23 **A** Yeah. I mentioned two things this morning.

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1 I could repeat what I said if you would like.  
2 **Q** Okay. No, you don't have to. Okay. And  
3 other than those instances of her 17 years of  
4 employment, is there anything else that you  
5 can remember?  
6 **A** She was often spoken to about giving legal  
7 advice to people who would call the  
8 solicitor's office. The attorney would tell  
9 her that that's not her purpose in that role.  
10 I certainly remember that.  
11 And I just had a general collection of  
12 observations over, -- well, I don't know how  
13 many years but certainly four, maybe longer,  
14 where, at times, she'd walk away from a  
15 ringing phone or just walk out of the office,  
16 this kind of a thing.  
17 **Q** Okay. And that was in no way insubordination  
18 to anyone what you --  
19 **A** I didn't suggest she was insubordinate.  
20 **Q** Okay. And you feel that those were signs of  
21 some inefficiency, is that --  
22 **A** Yeah. Over the course of time, I observed  
23 what I thought was unproductive, inefficient

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1 and unhelpful behavior.  
2 **Q** And as a result of those factors, you  
3 considered that in removing her, is that what  
4 you're saying today?  
5 **A** Well, all those things -- all those things  
6 were in my mind, but I think the most  
7 succinct statement of the reasons -- You've  
8 given me that letter this morning, "The  
9 specific reason for this action --," the  
10 action being the removal, "-- is that I  
11 desire to fill these positions with a person  
12 of my own choosing and in whom I have faith  
13 and confidence will perform the duties of  
14 such positions in an exemplary fashion."  
15 **Q** Okay. So that it really wasn't a removal  
16 because you didn't think she couldn't do a  
17 decent job in your office?  
18 **A** I don't think she could have done a decent  
19 job working with me, certainly.  
20 **Q** Do you know what her education is?  
21 **A** Not specifically.  
22 **Q** Do you know what her licenses are?  
23 **A** But, as I say, I've observed her for a number

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1 of years, so I do not know what her licenses  
2 are, no.  
3 **Q** Do you know she has a degree in office  
4 management, sir?  
5 **A** I did not know.  
6 **Q** Do you know she has a certificate for  
7 paralegal, do you know that? Did you know  
8 that before I just told you that?  
9 **A** No.  
10 **Q** Did you know that she is also certified to be  
11 a purchasing agent for a municipality?  
12 **A** I knew that she had passed certain  
13 qualifications regarding purchasing.  
14 **Q** Did you know that she served as a license  
15 board clerk while she was here?  
16 **A** During the time she was secretary to  
17 Mr. Crean?  
18 **Q** Yes.  
19 **A** I had heard that, yes.  
20 **Q** Do you know that she was elected by the other  
21 city employees to serve on the retirement  
22 board?  
23 **A** I'm aware of that.

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- 1 Q And did you appoint her to the Charter  
2 Commission or to the ordinance review --  
3 A I know she served on that Commission. I  
4 couldn't swear to the appointment at this  
5 point.  
6 Q You don't remember that you appointed her  
7 yourself?  
8 A Well, there are something in the order of 250  
9 people on boards and commissions, so I just  
10 don't know that.  
11 Q Okay. Do you know that she became the  
12 chairman for three years working on that job,  
13 do you know that?  
14 A I don't know that, but I don't doubt it.  
15 Q Okay. I believe when you said you received  
16 the letter from her requesting a public  
17 hearing, you just filed it, is that I'm  
18 showing you Exhibit 6. (Indicating)  
19 A I said I read it, and I filed it, yes.  
20 Q Okay. And so I thought you testified this  
21 morning that you believe that hearings would  
22 be granted by the council, not by the Mayor?  
23 A That's my understanding, yes.

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- 1 Q You don't. Okay. That's fine.  
2 Okay. Did you make any efforts to try  
3 and find her another job in the City of  
4 Beverly?  
5 A No.  
6 Q Do you know whether there were any vacancies  
7 in the secretarial or clerical or paralegal  
8 or anything else that she had qualifications  
9 for?  
10 A To the best of my knowledge, there were not  
11 any openings.  
12 MR. SHAPIRO: Mark this as the next  
13 exhibit.  
14 (Whereupon the Court Reporter marked  
15 as Exhibit No. 10 - Charter and Related  
16 Laws.)  
17 Q I've had the stenographer mark Exhibit 10  
18 Article 3 of "The Charter and Related Laws."  
19 Does this look like a copy of Article 3 of  
20 the Charter for Beverly? (Indicating)  
21 A Uh-huh.  
22 Q You have to say yes.  
23 A Yes. Excuse me.

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- 1 Q So you didn't forward this letter to the  
2 council is your best memory, is that right?  
3 A I don't think so.  
4 Q Okay. Now, I believe you -- Do you have any  
5 memory of her asking to be reassigned to  
6 another job?  
7 A I know she had interest in another position.  
8 Q And do you notice on the bottom line  
9 paragraph of -- Excuse me. Strike that.  
10 Do you know on the bottom line of  
11 Exhibit 3, it's dated December 31st, 2003,  
12 she says, "If you wish to re-assign me to a  
13 different department or location, please let  
14 me know."; do you remember that?  
15 A I believe so.  
16 Q Okay. And did you do anything to try to get  
17 her reassigned to another job?  
18 A I did not.  
19 Q Do you remember her asking you when you spoke  
20 to her that she said she would even move to  
21 the School Department? Do you have any  
22 memory of that conversation?  
23 A I do not.

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- 1 Q And pointing your attention to -- Pointing  
2 your attention to Section 3-3, do you recall  
3 that you referred to those sections in your  
4 notice to her, Exhibit 5, that, in accordance  
5 with 3-3 and 3-4 and 3-31.3, you were removing  
6 her from office; do you recall that?  
7 A Yes.  
8 Q Okay. So let's take a look at 3-3 for a  
9 moment, and 3-3 says, "The Mayor shall  
10 appoint, subject to the review of such  
11 appointments by the city council as provided  
12 in section 2-10, all city officers,  
13 department heads and the members of  
14 multiple-member bodies for whom no other  
15 method of appointment or selection is  
16 provided by the charter excepting only  
17 persons serving under the school committee,  
18 and persons serving under the city council."  
19 Is Ms. Atherton a city officer,  
20 department head or member of a  
21 multiple-member body, do you know, sir; was  
22 she?  
23 A I don't believe so.

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1 Q Okay. And reading down a little bit further,  
2 it talks about, "The mayor may suspend or  
3 remove --," on the first column down about  
4 eight lines, do you see where I'm looking at?  
5 "The mayor may suspend or remove any person  
6 appointed by the mayor in accordance with the  
7 procedure established in section 3-4."  
8 Again, --  
9 A Yes.  
10 Q -- it doesn't look like she's a party, that  
11 she is one of those named individuals, is  
12 that right?  
13 MS. CORBO: Objection. I'm sorry. To  
14 the form of the question.  
15 MR. SHAPIRO: Sure. Let me try again.  
16 Q It doesn't look like she's one of those  
17 people who -- Let me strike that.  
18 She is not a city officer, department  
19 head or member of a multiple-member body, is  
20 that right?  
21 A In my opinion, she is not.  
22 Q Okay. So can you tell me if you can -- Well,  
23 let me ask you something: Did you meet with

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1 counsel before this letter was sent out on  
2 January 5th, '04?  
3 A I did.  
4 Q Did you prepare this? Well, it's signed by  
5 you. You read it before it went out,  
6 correct?  
7 A More than that, yes.  
8 Q Okay. And so can you tell me why this  
9 Section 3-3 and 3-4 are referred to in this  
10 letter if it doesn't appear to apply to her?  
11 MS. CORBO: Objection to the extent  
12 that your understanding is based upon any  
13 conversations you had with your counsel at  
14 the time. I would instruct you not to answer  
15 under the grounds of privilege.  
16 Q Okay. Can you tell me your knowledge or  
17 understanding about why those two sections  
18 are referred to?  
19 A I'm going to accept the advice of counsel.  
20 Q Okay. It was based upon advice of counsel?  
21 A Certainly in consultation with counsel.  
22 Q Okay. All right. Did somebody in your  
23 office or did you, personally, go looking to

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1 see these Section 3-3 or Section 3-4 before  
2 this letter went out?  
3 A The matter was reviewed with counsel. That's  
4 as far as I'm going to go.  
5 Q All right. That's fine. Okay.  
6 MR. SHAPIRO: If you could mark this,  
7 please.  
8 (Whereupon the Court Reporter marked  
9 as Exhibit No. 11 - Defendant, City of  
10 Beverly's Answers to Plaintiff's First Set of  
11 Interrogatories.)  
12 Q We've now marked as Exhibit 11, "Defendant,  
13 City of Beverly's Answers to Plaintiff's  
14 First Set of Interrogatories," and -- Wait a  
15 minute. I did it wrong again. My yellow  
16 highlighter.  
17 I'm sorry. Could -- Let's see. I did  
18 that wrong.  
19 MR. SHAPIRO: Could I have you re mark  
20 this, and I'll give this to you as Exhibit  
21 No. 11 if you would? That's going to be your  
22 copy. (Indicating)  
23 MS. CORBO: Thank you.

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1 (Whereupon the Court Reporter marked  
2 as Exhibit No. 11 - Defendant, City of  
3 Beverly's Answers to Plaintiff's First Set of  
4 Interrogatories.)  
5 Q Okay. And I ask you to take a look at the  
6 last page of what we have just marked as,  
7 "Defendant, City of Beverly's Answers to  
8 Plaintiff's First Set of Interrogatories,"  
9 and see if that's your -- looks like an  
10 original signature on that document; is that  
11 your signature?  
12 A I believe so.  
13 Q Okay. And I see it indicates also that you  
14 had counsel with you to also sign that  
15 document, is that correct?  
16 A Yes.  
17 Q Okay. Now, let's take a look at No. 3, and  
18 the Question No. 3 is, "To the best of your  
19 knowledge --." I'm sorry. The interrogatory  
20 is, "Please state the reason that the  
21 Plaintiff was not transferred to another  
22 position for the City of Beverly at the time  
23 she was terminated in her position as

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Executive Secretary to the Mayor."

And the answer is, "To the best of my knowledge, there were no job openings available that matched Ms. Atherton's skills."

And, again, you attempted to find -- You did not attempt to find any jobs for Ms. Atherton?

**I do not -- As this indicates, I do not believe there were any job openings that matched her skills.**

And did you talk to Mr. Nelson about that who was the Building Commissioner at the time in January '04; do you have any memory of that, sir?

**I don't. I don't have any recollection of talking to him about that.**

Do you know if there was a lady who left the City of Beverly around that period of time whose name was Theresa who left because of allegations that she had stolen some money from the City of Beverly?

**I have no recollection of that.**

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Did you ever talk with Gerry Marsella about trying to find a job for Crystal Atherton?

**I did not.**

Now, Interrogatory No. 4 asked, "Please identify position requirements for the position assignment that plaintiff requested and was denied at the time she was terminated in her position as Executive Secretary to the Mayor."

And your answer is, "I am not aware that Ms. Atherton requested to be assigned to any particular position."

So you are unaware of any request by Ms. Atherton to be assigned to a particular position?

**To a particular position, I am unaware, yes.**

I see. And the letter here that she asked to be reassigned we just referred to as Exhibit No. 3, that doesn't -- that doesn't change your view of whether she asked to be assigned to a different department?

**It certainly doesn't refer to any particular position; so, no, it doesn't change my**

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**opinion.**

Now, moving on to Answer No. 6, and I'm not sure if this is a typo or not; but in any event, --

MR. SHAPIRO: Was there -- Yes, the 1997?

MS. CORBO: Actually, the Mayor --

MR. SHAPIRO: Can we just go off the record for a moment?

MS. CORBO: I'm sorry. Yes.  
(Whereupon an off-the-record discussion took place.)

MR. SHAPIRO: Back on the record,

What we have just talked about was making a correction to Answer No. 6 to be the date that she was appointed to work for the purchasing agent began on or about June 1997 is what I'm marking on my copy, and I don't know whether you do want to make that change, and I don't have a problem with doing that --

MS. CORBO: Okay.

MR. SHAPIRO: -- with just initialing and making the change to say "to June 1997,"

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so that we will have that accurate, and then that makes sense to me. Okay. Good.

MS. CORBO: And you agree that that's accurate?

THE WITNESS: I can't swear to the date, but it seems reasonable.

MR. SHAPIRO: Let me just see if I can be sure, too.

(Mr. Shapiro and Ms. Atherton confer off the record.)

Okay. Interrogatory No. 14. Let me go back to another question arising out of No. 4.

Who is the person who would normally be checking the various ten different department -- ten different department heads to see if there's a job opening? Is there a person who does that?

**The Human Resources Director would be the most --**

Was there any conversations with the Human Resources Director by your office to find out if there was any position open in the entire city?



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1 A I'm generally aware if there are openings  
2 because turnover is not that great.  
3 Q Okay. How many employees are there at the --  
4 Excuse me. After about 2004, approximately  
5 how many employees were there in the City of  
6 Beverly; just ball park round number?  
7 A On the city side?  
8 Q Yes.  
9 A About 280.  
10 Q I see. Is the School Department separate?  
11 A Separate.  
12 Q How many employees are there, about?  
13 A About 700.  
14 Q In Interrogatory No. 15, it refers to the  
15 people identified in No. 14, but we don't --  
16 they're listed also in No. 15. It says, "--  
17 please state and describe what contact  
18 Defendant through its representative,  
19 employee, agent, independent contractor,  
20 insurer and/or attorney has had with him or  
21 her pertaining to this lawsuit."  
22 Marshall Handy, you've never spoken  
23 to him about this Crystal Atherton's claim,

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1 is that what you say today?  
2 A I don't believe I've spoken to Marshall  
3 Handy about Crystal Atherton since the time  
4 he ceased to be an employee of the city.  
5 Q Okay. And how about -- Have you had any  
6 conversations with Mayor Crean about Crystal  
7 Atherton?  
8 A I have not.  
9 Q And Christopher Bradley, who is he?  
10 A He was the former purchasing agent.  
11 Q And did you talk with him about Crystal  
12 Atherton's performance while she worked for  
13 him?  
14 A While she worked for him? It's likely that  
15 we had discussion.  
16 Q Do you have any memory of any conversation  
17 that you had with him that you can relate to  
18 me today?  
19 A Not specifically, no.  
20 Q Well, do you have any vague recollections at  
21 all without being specific about talking  
22 about her to him?  
23 A Well, I believe she worked with him for

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1 several years, and I'm sure there was  
2 discussion, but I cannot remember any of it.  
3 Q Okay. Linda Giallongo.  
4 A Giallongo.  
5 Q Giallongo. What conversations did you have  
6 with her about this case?  
7 A I don't know of any conversations I've had  
8 with her about this case.  
9 MS. CORBO: Just as a point of  
10 clarification, --  
11 MR. SHAPIRO: Yes.  
12 MS. CORBO: -- the interrogatory also  
13 says "representative, employee, agent,  
14 independent contractor." So some of the  
15 answers may reflect contact that an agent may  
16 have had with Linda that the Mayor didn't  
17 directly himself have.  
18 MR. SHAPIRO: Well, as I'm reading  
19 this answer, it looks like it was just  
20 scheduling meetings and different things like  
21 that was what he said that he spoke with her  
22 about. It looks like he was talking about  
23 his own conversations. But fine, I'll ask.

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1 Q Were there other people who may have been  
2 acting on your behalf that spoke with her in  
3 more detail about what this case was about?  
4 A With Linda Giallongo?  
5 Q Yes.  
6 A I don't believe so.  
7 Q When you received this lawsuit, did you  
8 contact the city council?  
9 A Did I contact the city council?  
10 Q Yes. Any of the members of the city council?  
11 A No. I wasn't sure whether you were talking  
12 about the CIL or the SEL earlier.  
13 Q Yes.  
14 A No, I do not believe I discussed this with  
15 the city councilors.  
16 Q So when this case hit the newspapers or --  
17 Let me strike that.  
18 When this case came to your desk and  
19 you were aware that a lawsuit had been filed,  
20 you didn't contact any of the city councilors  
21 to say anything about this case?  
22 A I don't believe so. I believe I spoke with  
23 the city solicitor which is the typical way I

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1 **would respond.**  
2 Q And who is Pauline Teixeira?  
3 A **She's the Human Resources Director.**  
4 Q And did you or somebody in your office  
5 gathered documents for this response to this  
6 lawsuit, is that all that you talked with her  
7 about?  
8 A **I don't believe I've discussed this matter**  
9 **with her. I think the city solicitor**  
10 **developed the criteria --**  
11 Q About this --  
12 A **-- and outside counsel.**  
13 Q And in regard to John Dunn, you say all  
14 conversations that occurred in -- with him  
15 were in the presence of the city solicitor,  
16 is that right?  
17 A **I believe so.**  
18 Q So that other than talking to John Dunn about  
19 this case, you didn't talk with anybody --  
20 and your attorney, you didn't talk with any  
21 other city officials or city employees or  
22 department heads about this case?  
23 A **I think that's -- I think that's right. I**

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1 **notice here that her name is misspelled, but**  
2 **perhaps it's not too important.**  
3 Q So other than talking with John Dunn and your  
4 counsel, the lawyers, you say today that you  
5 talked with nobody about her job performance  
6 or her discharge or -- or her discharge?  
7 A **Not that I can recall.**  
8 Q Not that you can recall. Okay. Now, No. 17,  
9 "Please state and describe each and every  
10 ground relied upon, know, and/or heard by  
11 defendant to indicate or demonstrate that  
12 Plaintiff did not merit retention in another  
13 position as an employee for the City of  
14 Beverly."  
15 And your answer, when we get to the  
16 next page after the lawyer's objection says,  
17 "I had the opportunity to observe  
18 Ms. Atherton in her position as paralegal for  
19 the City Solicitor's office. I was not  
20 impressed by Ms. Atherton's performance in  
21 that position and did not have confidence in  
22 Ms. Atherton's ability to perform as the  
23 Confidential Secretary to the Mayor."

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1 Is there anything you want to add to  
2 that today?  
3 A **No.**  
4 Q Okay. That's all I have for that document.  
5 As a result of your observations of  
6 her work for the city solicitor's office when  
7 she was with Mr. Handy, you did not request  
8 that she be removed from her office, is that  
9 right, to Mr. Handy or --  
10 A **I did not request that.**  
11 Q Okay. And you did not request that she be  
12 disciplined for anything you saw, is that  
13 right?  
14 A **I left that to Mr. Handy.**  
15 Q And you did not ask that she be retrained or  
16 given further education on how to properly  
17 respond to phone calls and those issues, did  
18 you?  
19 A **No. I left that between the department head**  
20 **and the employee.**  
21 Q Could you tell me -- I'm going back to  
22 Exhibit 9, Section 3-313. It refers to the,  
23 "Authorities and Responsibilities." Were

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1 there any other secretarial positions in your  
2 office other than confidential secretary,  
3 administrative assistant?  
4 A **No.**  
5 Q And how many positions are there -- Excuse  
6 me.  
7 How many positions were there in 2004  
8 that held those jobs, that job?  
9 A **I'm not sure if I understand the question.**  
10 **How many positions throughout the city?**  
11 Q No. How many people in your office are  
12 confidential secretary, administrative  
13 assistant to the Mayor?  
14 A **One.**  
15 Q Just one?  
16 A **Yes.**  
17 Q And how many secretaries are there in your  
18 office?  
19 A **One.**  
20 Q Okay. And the -- Have you had an opportunity  
21 to read Part C that describes what their  
22 duties are?  
23 A **I think so.**

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1 Q And is there anything more or less that are  
2 part of the job duties of the confidential  
3 secretary to the Mayor?  
4 A I'm certain it's not all inclusive given that  
5 there's only the one person.  
6 MS. CORBO: Objection. I just want to  
7 make a note for the record that there's only  
8 one page to this document, and it looks like  
9 it may continue onto another page. I'm not  
10 sure that Section C is complete. I don't  
11 know if it does or not. So when you ask if  
12 there's more --  
13 MR. SHAPIRO: Okay. I think that's  
14 it, but -- Okay. Good note. And we'll find  
15 if there are more.  
16 Q And what is there that makes this particular  
17 job confidential as compared to just a  
18 general secretarial?  
19 A Well, there are a great many things where  
20 confidentiality is relevant as I'm sure we  
21 can all understand.  
22 Q Well, some of the tasks that are to be done  
23 have nothing to do with confidentiality, is

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1 that correct?  
2 A That's correct.  
3 Q Meeting as liaison officer between the Mayor,  
4 the media, public interest groups, businesses  
5 and residents don't involve confidentiality,  
6 do they?  
7 A I'm certain that there are a number of  
8 activities that don't involve  
9 confidentiality.  
10 MR. SHAPIRO: Please mark these as the  
11 next exhibits.  
12 (Whereupon the Court Reporter marked  
13 as Exhibit No. 12 - Complaint and Demand for  
14 Trial by Jury.)  
15 (Whereupon the Court Reporter marked  
16 as Exhibit No. 13 - Answer of Defendants,  
17 City of Beverly and William F. Scanlon, Jr.)  
18 Q The next exhibit that we've marked is -- What  
19 I want to do is see if we get -- And I'll put  
20 these out together and go through some of the  
21 admissions or the denials in the Complaint  
22 and the Answer.  
23 And the first paragraph that I just

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1 want you to look at was Paragraph 7. Let's  
2 first see if you understand that the exhibit  
3 we marked as Exhibit 13 is the, "Answer of  
4 Defendants, City of Beverly and William F.  
5 Scanlon, Jr.," and it's signed by the  
6 attorney for the city, and I just want to ask  
7 you: Have you ever seen this document  
8 before? (Indicating)  
9 A I didn't sign it.  
10 Q No, you did not.  
11 A No. I'm not absolutely certain. I believe  
12 that I'm somewhat familiar with questions  
13 that seem to be discussed in it, but I'm not  
14 absolutely certain, sir.  
15 Q Okay. Well, let's just take a look at  
16 Paragraph 7 for the moment and see if you  
17 agree with some of the answers that we have  
18 here, if that makes sense, and you can  
19 explain them to me.  
20 No. 7, the Complaint says, "During her  
21 seventeen year tenure as a City of Beverly  
22 employee, Plaintiff, Crystal Atherton, served  
23 in several positions, including the law

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1 department paralegal and assistant to the  
2 Purchasing Director."  
3 And your answer was, "Denied as to  
4 allegation that the Plaintiff had a  
5 'seventeen year tenure.'" Any reason you  
6 could think of why that --  
7 A I'm not sure what her tenure was. I do  
8 recall when she was getting close to what she  
9 considered tenure, she used to talk about  
10 taking retirement, and I'd have to see the  
11 actual dates. I can't say that she did or  
12 didn't have 17 years of service. It's not  
13 clear to me that she did. Let me just say  
14 that.  
15 Q Okay. Let's look at No. 20, please, the  
16 Answer and the Complaint there. And  
17 number -- Paragraph 20 of the Complaint,  
18 Exhibit 12, says, "During her various  
19 capacities on behalf of the City of Beverly,  
20 Plaintiff, Crystal Atherton, was never  
21 informed that any particular political  
22 association, affiliation or patronage would  
23 be a requirement for performance of her job."

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1 And the answer is, "Defendants are  
2 without sufficient information to either  
3 admit or deny the allegations in Paragraph  
4 20."

5 And what I want to ask you is: Did  
6 you ever tell her that her political  
7 affiliations were an issue for you?

8 A No.

9 Q Do you know if anybody else did?

10 A I do not.

11 Q But, in fact, her political affiliation was a  
12 factor that went into the decision to have  
13 her as your confidential secretary, isn't  
14 that right? They were a factor?

15 A It didn't help.

16 Q Okay. And Paragraphs 25, 26 and 27. Let's  
17 see if I can just go through those. Let me  
18 take a look at 25, 26 and 27. Okay. 25.  
19 Paragraph 25 says, "Plaintiff, Crystal  
20 Atherton, was not discharged because of  
21 unsatisfactory job performance." And that  
22 is, "Denied."

23 Do you mean that should have been

1

2

3 C

4 A

5

6

7 Q

8 A

9

10

11 Q

12

13

14

15

16

17 A

18

19

20 Q

21

22

23 A

...ence that going  
f ... she could do a reasonable job as is  
written in the documents.

But there was no unsatisfactory job  
performance for you that you were discharging  
her for, was there?

She did not work for me.

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1 admitted? And I'm just asking you.

2 MS. CORBO: Objection. Are you asking  
3 me about --

4 MR. SHAPIRO: No. I'm asking -- No,  
5 I'm asking Mr. -- the Mayor if he has a view  
6 as to whether or not did he intended to say  
7 "denied."

8 MS. CORBO: Objection to the extent  
9 that you have knowledge as to what the  
10 drafter of this document meant when they  
11 provided an answer, you can answer, but --

12 THE WITNESS: But I don't. I don't  
13 believe I can answer.

14 Q All right. Well, let me ask you then today  
15 without looking at the answer that counsel  
16 has filed for you, is it true or false that  
17 she was not discharged because of  
18 unsatisfactory job performance?

19 MS. CORBO: Objection as to form.

20 Q Well, see if you can answer that. Do you  
21 understand the question? Do you want me to  
22 try it again?

23 A Do you have a --

1 Q Right. So did you --

2 A Again, it seems like it's a question that's  
3 kind outside of the foul line.

4 Q Sir, --

5 MS. CORBO: Objection. He's already  
6 answered about her performance and the  
7 concerns he had.

8 Are you referring to her job  
9 performance as executive secretary?

10 MR. SHAPIRO: No. I'm trying to get  
11 an answer to this Complaint that I filed that  
12 I think there is a little bit of confusion as  
13 to whether the answer is denied or admitted,  
14 and so I just want to be sure that what he's  
15 saying today is what he intends the answer to  
16 be to this allegation.

17 So please don't give him anymore  
18 suggestions as to what the answer should be.  
19 It would be helpful --

20 MS. CORBO: Well, I'll object as much  
21 as I want.

22 MR. SHAPIRO: You can object as much  
23 as you want, but you're subject to sanctions

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1 if you keep giving him lengthy answers other  
2 than objection or not objection.  
3 MS. CORBO: So please file for them.  
4 The form of the question. It's asked and  
5 answered and asked and answered. He's  
6 already discussed his opinions about her job  
7 performance. I don't think your question is  
8 clear. I think that the man has indicated  
9 that.

10 MR. SHAPIRO: The question is -- All  
11 right. Well, let me try one last time, and  
12 please don't say anything other than  
13 objection when I ask him a question.

14 MS. CORBO: I'll object and clarify as  
15 I feel appropriate.

16 MR. SHAPIRO: Okay. You can do that  
17 but --

18 MS. CORBO: I will.

19 MR. SHAPIRO: Okay. You are at great  
20 risk before the Judge. Okay. And --

21 MS. CORBO: And I disagree.

22 MR. SHAPIRO: Okay.

23 Q (By Mr. Shapiro) I'm asking you to take a

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1 Q I thought so, too. Paragraph 26. You didn't  
2 discharge her because of any specific  
3 job-related action that she had taken either,  
4 did you?

5 A I believe that's true.

6 Q And you did not discharge her because of any  
7 job-related omission that she had failed to  
8 take; that's also true, isn't it, sir?

9 A I'm not aware of what omissions she might  
10 have had or not. I go back to believing that  
11 all three questions are really moot  
12 because --

13 Q Okay.

14 A -- my actions were taken looking forward, not  
15 at her interactions with then Mayor Crean.

16 Q Okay. Exactly. Okay. Let's take a look at  
17 Paragraph 28 for a moment. Paragraph 28 asks  
18 you prior to her being -- Paragraph 28 of the  
19 Complaint, Exhibit 12, says, "Prior to being  
20 discharged, and after her discharge,  
21 Plaintiff, Crystal Atherton was: (a) not  
22 afforded an opportunity to be heard to  
23 contest her discharge." Is that true?

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1 look at Paragraph 25 of the Complaint. It  
2 says, "Plaintiff, Crystal Atherton, was not  
3 discharged because of unsatisfactory job  
4 performance." Is that true or false? And  
5 just one second. Take a -- Just read  
6 Paragraphs 26 and 27 and see if that helps  
7 you to answer 25.

8 A (Reviewing document)

9 Q And when you're ready, let me know.

10 A I can't speak to the specific performance of  
11 her during those years. She did not, in  
12 fact, work for me. I removed her from office  
13 when she was unwilling to resign for the  
14 reasons cited in the material you've put into  
15 the exhibits earlier in the day. I think  
16 that's clear with regard to this request.

17 Q Okay. And I'm asking you now: Just  
18 forget about what you've already told me.  
19 I'm asking you to answer my question which  
20 I'm asking you, as to Paragraph 25, whether  
21 you admit or deny what is said in Paragraph  
22 25?

23 A I think what you say there is true.

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1 A She did not pursue the opportunity. She --  
2 As her own letter states, she took three  
3 weeks of vacation, and then she never pursued  
4 it with the city council. So I think that  
5 I'd have to deny the statement.

6 Q Okay. Paragraph --

7 A This lady is not bashful. She could have  
8 gone forward and done that with the city  
9 council.

10 Q Okay.

11 A As stated in the Charter.

12 Q And Paragraph B says she was "not afforded a  
13 hearing before an impartial tribunal in which  
14 to contest or challenge her discharge." Is  
15 that also --

16 A That's the same answer as I have just given  
17 you, sir.

18 Q Okay. But when you received the letter from  
19 her asking for a hearing, you just filed it  
20 away, right, sir?

21 A It was not the proper process to obtain a  
22 hearing, and the lady is very familiar with  
23 the City Charter.

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1 Q Okay. By the way, did you consider that  
2 after 17 years of her working here, if she  
3 had another three years of employment, she  
4 would have received 20 years' retirement  
5 pension?  
6 A I don't find the logic in that approach  
7 because once one is eligible for a pension,  
8 there's no magic to the number of years.  
9 Every year one works, it increases, so it's  
10 not as if there's a big jump at 20 years  
11 versus 19. There's no difference, really,  
12 between 19 and 20 and 18 and 19 in percentage  
13 terms.  
14 Q Okay.  
15 A So it's just -- I see that as a red herring.  
16 Q Okay. Now, Linda Giallongo --  
17 A Giallongo.  
18 Q Giallongo. Is the person who replaced  
19 Crystal Atherton as the Mayor's executive  
20 secretary, is that correct?  
21 A Yes.  
22 Q Okay. Now, did you know that she had filed a  
23 lawsuit against the city when Tom Crean had

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1 your attention to the third column.  
2 "Giallongo called the move 'political,' and  
3 said she suspects that her friendship with  
4 former Mayor William Scanlon bothered her new  
5 boss."  
6 Is that something that she talked with  
7 you about if she was having trouble with  
8 Mayor Crean; do you recall?  
9 A When I left the office for the years 2002,  
10 2003, I did not keep in contact with her.  
11 Q Okay. And are you aware that Tom Crean kept  
12 her in the job for about nine months to see  
13 how she'd work out before he terminated her?  
14 A That's what it says.  
15 Q Okay. And do you see in this article that's  
16 under the writer, Mark Fortier,  
17 F-O-R-T-I-E-R, is quoting you and says,  
18 "Scanlon, reached at home yesterday, called  
19 Giallongo 'one of the most competent people  
20 I've ever come across.' He said it is a  
21 shame that Crean decided to replace her. 'I  
22 find it exceedingly unfortunate for the  
23 community to lose her talents, and I expect

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1 removed her?  
2 A I am aware there was a lawsuit.  
3 Q Okay. And, in fact, her lawsuit was making  
4 the same claim against Mayor Crean that  
5 Ms. Atherton is making against you, isn't  
6 that a general fair statement?  
7 MS. CORBO: Objection.  
8 A I don't know the details of her lawsuit. I  
9 was away from the city at that time.  
10 Q Okay. We'll soon find out.  
11 MR. SHAPIRO: Mark that as an exhibit.  
12 (Whereupon the Court Reporter marked  
13 as Exhibit No. 14 - Friday - The Salem News  
14 September 27, 2002.)  
15 MS. CORBO: Can we go off the record?  
16 MR. SHAPIRO: Sure.  
17 (Whereupon an off-the-record  
18 discussion took place.)  
19 MR. SHAPIRO: Back on the record.  
20 Q Have you had a chance to look at that  
21 document? (Indicating)  
22 A Some of it.  
23 Q Okay. Let me bring to your -- Let me call

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1 that there are people who don't have any clue  
2 what to do with certain problems who will now  
3 be making the decisions,' Scanlon said."  
4 Does that refresh your memory about  
5 your involvement with this situation back in  
6 September of '02?  
7 A I think it's a fair -- I think it's a fair  
8 quote. But I don't believe there was any  
9 involvement with her. I think I'd probably  
10 make the same statement today.  
11 Q Okay. Well, you certainly have a fondness  
12 for her ability, at least, is that true?  
13 A Yes.  
14 MR. SHAPIRO: Mark that as the next  
15 exhibit.  
16 (Whereupon the Court Reporter marked  
17 Exhibit No. 15 - Letter - 1/5/04 to Honorable  
18 City Council from William F. Scanlon, Jr.)  
19 Q I'm showing you a letter dated January 5th,  
20 2004 that we have marked as Exhibit 15, and  
21 ask you if you remember signing that letter?  
22 (Indicating)  
23 A I believe so, yes.

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1 Q Yes. And can you tell me approximately when,  
2 prior to January 5th, 2004, you had contacted  
3 Ms. Giallongo to bring her back to work for  
4 you?  
5 A I don't know when.  
6 Q A week, a month, three months, four months?  
7 A I don't know when.  
8 Q No estimate, possibly? A wild estimate, a  
9 guess?  
10 MS. CORBO: Objection.  
11 A I simply don't know when. Certainly, prior  
12 to that date, but I don't know when.  
13 Q Do you know if it was prior to  
14 December 15th of --  
15 A I don't -- Sir, I do not know the date.  
16 Q I'm just trying to see if I can help you to  
17 remember what the date is.  
18 Does it help you that you were talking  
19 to Crystal about removing her in the middle  
20 of December, that you may have called Ms.  
21 Giallongo to come in?  
22 A It's possible. It's possible.  
23 Q Would it be your normal procedure that you

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1 A I don't believe so.  
2 Q So when you decided to terminate  
3 Ms. Atherton, you didn't review Mr. Crean's  
4 letter that says to Ms. Giallongo the reason  
5 he is terminating her was -- your attitude  
6 toward my staff and hires has been at times  
7 uncooperative and unhelpful. There are  
8 deficiencies in your job performance. I  
9 cannot guarantee that you would be able to  
10 stay here for the next four years and be  
11 eligible for the higher pension you seek.  
12 All of those kinds of things; these are ideas  
13 you got from Tom Crean?  
14 A I don't believe, as I've stated, that I have  
15 ever seen this letter before this moment,  
16 sir.  
17 Q I see. Have you -- Or from anybody that this  
18 was the kind of a letter that Mr. Crean had  
19 sent to Ms. Giallongo before you sent similar  
20 documents to my client?  
21 MS. CORBO: Objection.  
22 A That's a ridiculous question given that I  
23 just told you that I've never seen this

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1 would want to have a vacancy filled before  
2 you let Ms. Atherton go?  
3 A I don't think there's a normal procedure  
4 there. No, I don't think that I have a  
5 normal procedure. It may be that more often  
6 than not, I'd do it the other way.  
7 Q Okay. Can you tell me: When did you start  
8 thinking about contacting Ms. Giallongo to  
9 bring her back as your secretary?  
10 A Probably after I was elected or re-elected.  
11 Q Well, that makes sense. Okay. Good.  
12 MR. SHAPIRO: Can you mark that one,  
13 please?  
14 (Whereupon the Court Reporter marked  
15 as Exhibit No. 16 - Letter - 9/27/02 to Ms.  
16 Linda Giallongo from Thomas M. Crean.)  
17 Q I'm showing you a letter by Thomas Crean that  
18 your counsel produced for me in the  
19 production of documents, and it's dated  
20 September 27th, 2002. I ask you to -- And  
21 we've had that marked as Exhibit 16, and I'd  
22 ask if you've ever seen that letter before?  
23 (Indicating)

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1 letter.  
2 Q I didn't ask you if you saw the letter. The  
3 only question I just asked you -- I just  
4 asked you: Had you heard from anybody that  
5 that was what Mr. Crean did when he  
6 terminated Ms. Giallongo?  
7 A You made reference to the letter which I said  
8 I had not seen and then asked me if I got  
9 ideas from it.  
10 Now, please, remember what you're  
11 saying when you ask the question because it  
12 gets rather ridiculous at moments.  
13 Q I just wanted to keep track.  
14 MR. SHAPIRO: Could you read back the  
15 question that I had in that area when I  
16 started asking about this letter, please?  
17 (Whereupon the Court Reporter read  
18 back the requested information.)  
19 A Well, it started off as a direct reference to  
20 that letter. So she's already answered the  
21 question.  
22 MR. SHAPIRO: No, the second -- the  
23 next question that I asked you to read.

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1 (Whereupon the Court Reporter read  
2 back the requested information.)  
3 Q Okay. Well, then I'll ask the question  
4 again.  
5 Had you spoken to anybody about -- Let  
6 me ask it this way: Had you talked to Ms.  
7 Giallongo about the way that Mr. Crean had  
8 terminated her, alleged all of the defects in  
9 her work as an excuse to terminate her?  
10 A I did not get involved in that matter. I was  
11 away from the city when that happened.  
12 Q So the answer is, no, you never spoke to her  
13 about that case?  
14 A We may have talked a little bit at some point  
15 of, you know, that life wasn't easy, and she  
16 left but not beyond that kind of thing.  
17 Q So you didn't get the idea to say that  
18 Ms. Atherton's work performance is lousy from  
19 Ms. Giallongo?  
20 A Absolutely, I did not.  
21 Q Okay. Good. Were you aware that there was  
22 a -- I think I had asked you before about the  
23 lady in the Building Department who had been

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1 terminated, and I think you said you weren't  
2 aware of that at all, is that right?  
3 A That's what I said, yes.  
4 Q Was there a position as the assistant to the  
5 plumbing inspector that was not filled for a  
6 long time in 2004 that you recall?  
7 A I honestly can't tell you.  
8 Q Do you know whether there was a position in  
9 the Building Department of secretary that  
10 went unfilled for a long time in 2004?  
11 A I have answered you, and I'll do it again,  
12 that I'm not aware of any open positions that  
13 are relevant or even open positions that  
14 weren't relevant.  
15 Q Okay.  
16 A I'm not aware of any openings that existed at  
17 that time.  
18 Q Okay. And just so that I'm specific, not  
19 general, like your answer just was, so then  
20 you were unaware that there was a secretarial  
21 position open in 2004 for a long period of  
22 time in the Building Commissioner's  
23 Department, is that --

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1 A I am unaware of that, yes.  
2 MR. SHAPIRO: Okay. Just one moment  
3 and let me just see if I have anything  
4 further if I could. Let me talk to my client  
5 for a moment if I could, and we'll come right  
6 back very quickly.  
7 (Break takes place at 2:04 p.m.)  
8 (Back on the record at 2:06 p.m.)  
9 Q Just one more try at seeing if you have any  
10 memory of anybody talking to you about a job  
11 opening in the Building Department.  
12 Do you have any memory of Roy Gelineau  
13 talking with you about filling a vacancy in  
14 the Building Department for Ms. Atherton?  
15 MS. CORBO: Objection to the extent  
16 that you're requesting conversation with  
17 counsel.  
18 MR. SHAPIRO: It's all legal advice.  
19 Why would that be privileged?  
20 MS. CORBO: Huh?  
21 MR. SHAPIRO: It's all legal advice.  
22 Why would that be privileged?  
23 MS. CORBO: Well, it has to do with a

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1 potential lawsuit from Ms. Atherton, wouldn't  
2 it?  
3 MR. SHAPIRO: I don't think so.  
4 Q Anyway, --  
5 A I have no such recollection.  
6 MR. SHAPIRO: Okay. Okay. That's all  
7 I have.  
8 THE WITNESS: Okay.  
9 MS. CORBO: I just have a few more.  
10  
11 CROSS EXAMINATION  
12 Q (By Ms. Corbo) I'm going to redirect your  
13 attention to what's been marked as -- I  
14 believe as Exhibit 5. Is it an accurate  
15 statement to state that the reasons you state  
16 in your letter of January 5th that you are  
17 removing Ms. Atherton from her position is  
18 that because you wanted to appoint someone in  
19 whom you had faith and confidence who would  
20 perform the duties of the position in an  
21 exemplary fashion?  
22 A That is the reason, yes.  
23 Q Okay. And you previously testified that you



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1 had some concerns regarding Ms. Atherton's  
2 performance that you had observed while you  
3 were Mayor, is that correct?  
4 **A That is correct, yes.**  
5 **Q** Did those concerns regarding Ms. Atherton's  
6 performance that you had previously observed  
7 have anything to do with the fact that you  
8 did not -- that you sought to remove her from  
9 the position of confidential executive  
10 secretary?  
11 **A They were a part of an overall opinion I**  
12 **developed that she was not appropriate for**  
13 **that position under my --**  
14 **Q** So if I refer your attention to what's been  
15 marked as Exhibit 12, and we look back at, I  
16 believe it was Paragraph 24. I'm sorry. It  
17 was Paragraph 25. The statement in  
18 Paragraph 25 in the Complaint reads,  
19 "Plaintiff, Crystal Atherton, was not  
20 discharged because of unsatisfactory job  
21 performance."  
22 My question to you is: Was her  
23 performance at all a consideration in your

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1 MS. CORBO: I have no further  
2 questions.  
3 MR. SHAPIRO: Nothing further.  
4 (Whereupon the deposition of William  
5 F. Scanlon, Jr., concluded at 2:10 p.m.)  
6  
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1 decision to remove her from the position of  
2 executive confidential secretary?  
3 **A Her expected performance going forward based**  
4 **on things I had learned and observed after**  
5 **years of watching her work.**  
6 **Q** Okay. In Paragraph 26, it says, "Plaintiff,  
7 Crystal Atherton, was not discharged because  
8 of any specific job-related action that she  
9 had taken."  
10 Did Ms. Atherton fail to resign when  
11 you asked her to resign?  
12 **A Yes.**  
13 **Q** And then in Paragraph 27 it says, "Plaintiff,  
14 Crystal Atherton, was not discharged because  
15 of any specific job-related omission that she  
16 had failed to take."  
17 Did Ms. Atherton resign when you  
18 requested her resignation?  
19 **A No.**  
20 **Q** Was one of the reasons that she was removed  
21 from her position because she failed to  
22 resign?  
23 **A Absolutely.**

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# CERTIFICATE

I, WILLIAM F. SCANLON, JR., do hereby  
certify that I have read the foregoing transcript  
of my testimony and further certify that said  
transcript is a true and accurate record of said  
testimony and signed under the pains and  
penalties of perjury.

Dated this \_\_\_\_ day of \_\_\_\_\_  
2007.

\_\_\_\_\_  
WILLIAM F. SCANLON, JR.

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C E R T I F I C A T E

I, Simonee J. Elwood, R.P.R. and a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 12th day of September 2007, personally appeared before me William F. Scanlon, Jr., at the Beverly City Hall, 191 Cabot Street, Beverly, Massachusetts, in the aforementioned cause pending in the United States District Court, for the District of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to computer transcription under my supervision. I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Simonee J. Elwood

REGISTERED PROFESSIONAL REPORTER

My Commission Expires: February 14, 2008

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ERRATA SHEET

Date of Deposition: September 12, 2007

Case Name: Crystal A. Atherton, et al vs. City of Beverly, et al  
C.A. No. 05-11323MLW

Deponent's Name: William F. Scanlon, Jr.

I, the undersigned, do hereby certify that I have read the foregoing deposition transcript and that to the best of my knowledge, said deposition transcript is true and accurate (with the exceptions of the following changes listed below):

\_\_\_\_\_  
WILLIAM F. SCANLON, JR.

Dated \_\_\_\_\_

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# Exhibit 3

**EXHIBIT A**

**SUBPART A.  
BEVERLY HOME RULE CHARTER\***

Art. 1.	Incorporation; Short title; Definitions, §§ 1-1—1-7
Art. 2.	Legislative Branch, §§ 2-1—2-11
Art. 3.	Executive Branch, §§ 3-1—3-8
Art. 4.	School Committee, §§ 4-1—4-3
Art. 5.	Administrative Organization, §§ 5-1—5-8
Art. 6.	Finance and Fiscal Procedures, §§ 6-1—6-9
Art. 7.	Elections; Election Related Matters, §§ 7-1—7-13
Art. 8.	General Provisions, §§ 8-1—8-16
Art. 9.	Transitional Provisions, §§ 9-1—9-7

A TRUE COPY

ATTEST: *James C. Madsen*  
City Clerk

\*Editor's note—Set out herein is the Home Rule charter of Beverly, Massachusetts, as proposed by the Beverly Charter Commission and approved by the voters on Nov. 7, 1985. The former Charter derived from the Acts of 1910, chapter 542; Acts of 1913, chapter 398; Acts of 1920, chapter 26; Acts of 1922, chapter 140; Acts of 1936, chapter 29; Acts of 1943, chapter 196; Acts of 1953, chapter 95; Acts of 1954, chapter 602.

Sections lacking a history note contained in parentheses at the end of the section derive unamended from the Charter of 1985, and sections amended by subsequent legislation are followed by a parenthetical history note. Material in brackets [ ] has been added by the editor for purposes of clarification.

## THE CHARTER AND RELATED LAWS

§ 1-7

## ARTICLE 1. INCORPORATION; SHORT TITLE; DEFINITIONS

## Sec. 1-1. Incorporation.

The inhabitants of the City of Beverly, within the territorial limits established by law, shall continue to be a municipal corporation, a body corporate and politic, under the name "City of Beverly."

## Sec. 1-2. Short title.

This instrument shall be known, and may be cited, as the Beverly Home Rule Charter.

## Sec. 1-3. Distribution of powers.

The administration of the fiscal, prudential and municipal affairs of Beverly, with the government thereof, shall be vested in an executive/administrative branch headed by a mayor, and a legislative branch to consist of a city council. The legislative branch shall never exercise any executive/administrative power and the executive/administrative branch shall never exercise any legislative power.

## Sec. 1-4. Powers of the city.

Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or general laws of the Commonwealth, it is the intention and the purpose of the voters of Beverly through the adoption of this charter to secure for themselves and their government all of the powers it is possible to secure as fully and as completely as though each such power were specifically and individually enumerated herein.

## Sec. 1-5. Construction.

The powers of the City of Beverly under this charter are to be construed liberally in favor of the city, and the specific mention of any particular power is not intended to limit the general powers of the city as stated in section 1-4.

## Sec. 1-6. Intergovernmental relations.

Subject only to express limitations in the constitution or general laws of the Commonwealth,

Beverly may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the Commonwealth or any agency or political subdivision thereof, or with the United States government or any agency thereof.

## Sec. 1-7. Definitions.

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

(a) *Charter*: The word "charter" shall mean this charter and any amendment to it hereafter adopted.

(b) *City*: The word "city" shall mean the City of Beverly.

(c) *City bulletin board*: The words "city bulletin board" shall mean the bulletin board in the city hall on which the city clerk posts official notices of meetings and upon which other official city notices are posted, and the bulletin boards at any other locations as may be designated city bulletin boards by the city council.

(d) *City agency*: The words "city agency" shall mean any multiple member body, any department, division, or office of the City of Beverly.

(e) *City officer*: The words "city officer" when used without further qualification or description, shall mean a person having charge of an office or department of the city who in the exercise of the powers or duties of such position exercises some portion of the sovereign power of the city.

(f) *Emergency*: The word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action or response.

(g) *Full council, full multiple member body*. The words "full council" or "full multiple member body" shall mean the entire authorized complement of the city council, school committee or other multiple member body, notwithstanding any vacancy, which might exist.

(h) *General laws*: The words "general laws" (all lower case letters) shall mean laws enacted by the

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state legislature which apply alike to all cities and towns, to all cities, or to a class of two or more cities and or cities and towns of which Beverly is a member.

(i) *General Laws*: The words "General Laws" (initial letter of each word in upper case letters) shall mean the General Laws of the Commonwealth of Massachusetts, a codification and revision of statutes enacted on December 22, 1920, and including all amendments thereto subsequently adopted.

(j) *Initiative measure*: The words "initiative measure" shall mean a measure proposed by the voters through the initiative process provided under this charter.

(k) *Local newspaper*: The words "local newspaper" shall mean a newspaper of general circulation within Beverly, with either a weekly or daily circulation.

(l) *Majority vote*: The words "majority vote", when used in connection with a meeting of a multiple member body, shall mean a majority of those present and voting, unless another provision is made by ordinance, by law, or by its own rules.

(m) *Measure*: The word "measure" shall mean any ordinance, order, resolution, or other vote or proceeding adopted, or which might be adopted by the city council or the school committee.

(n) *Multiple member body*: The words "multiple member body" shall mean any board, commission, committee, sub-committee or other body consisting of two (2) or more persons whether elected, appointed or otherwise constituted, but not including the city council or the school committee.

(o) *Referendum measure*: The words "referendum measure" shall mean a measure adopted by the city council or the school committee which is protested under the referendum procedures of this charter.

(p) *Voters*: The word "voters" shall mean registered voters of the City of Beverly.

## ARTICLE 2. LEGISLATIVE BRANCH

## Sec. 2-1: Composition; term of office.

(a) *Composition*: There shall be a city council of nine (9) members which shall exercise the legislative powers of the city. Three (3) of these members, to be known as councillors-at-large, shall be nominated and elected by and from the voters at large. Six (6) of these members, to be known as ward councillors, shall be nominated and elected by and from the voters of each ward, one (1) such ward councillor to be elected from each of the six (6) wards into which the city is divided, in accordance with section 7-5.

(b) *Term of office*: The term of office for all city councillors shall be for two (2) years each, beginning on the first Monday of January in the year following their election, and until their successors have been qualified.

(c) *Eligibility*: Any voter shall be eligible to hold the office of councillor-at-large. A ward councillor shall at the time of election be a voter of the ward from which elected, provided, however, if any ward councillor shall during the first eighteen (18) months of the term of office remove to another ward in the city, such office shall be deemed vacant and the balance of the unexpired term shall be filled in the manner provided in section 2-11. If such removal occurs after the first eighteen months of the term of office, such councillor may continue to serve for the balance of the term for which elected. If a councillor-at-large or a ward councillor removes from the city during the term for which elected such office shall immediately be deemed vacant and filled in the manner provided in section 2-11.

## Sec. 2-2. Council president.

(a) *Election and term*: The candidate for councillor-at-large receiving at the biennial city election the largest number of votes for the office shall serve as council president during the ensuing term of office.

(b) *Powers and duties*: The council president shall preside at all meetings of the city council, regulate its proceedings and shall decide all questions of order. The council president shall appoint

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all members of all committees of the city council, whether special or standing. The council president shall have the same powers to vote upon all measures coming before the city council as any other member of the city council. The council president shall perform such other duties consistent with the office as may be provided by charter, by ordinance or by other vote of the city council.

(c) *Council vice-president:* As soon as practicable after the councillors-elect have been qualified following each biennial election, the members of the city council shall elect from among its members a vice-president who shall act as president during the absence or disability of the council president. The powers of an acting council president shall be limited to only those powers which are indispensably essential to perform the duties of acting council president during the absence or disability of the council president.

### Sec. 2-3. Prohibitions.

No member of the city council shall hold any other city office or city employment for which a salary or other emolument is payable from the city treasury. No former member of the city council shall hold any compensated appointed city office or city employment until one (1) year following the date on which such former member's service on the city council has terminated.

### Sec. 2-4. Compensation; expenses.

(a) *Salary:* The city council may, by ordinance, provide an annual salary for its members. No ordinance increasing such salary shall be effective, however, unless it shall have been adopted during the first twelve months of a term of office and it provides that such salary is to take effect with the organization of the city government following the next biennial election.

(b) *Expenses:* Subject to appropriation, the council members shall be entitled to reimbursement of their actual and necessary expenses in the performance of their duties.

### Sec. 2-5. General powers.

Except as otherwise provided by general law or by this charter, all powers of the city shall be

vested in the city council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the city by law.

### Sec. 2-6. Exercise of powers; quorum; rules.

(a) *Exercise of powers:* Except as otherwise provided by general law or by this charter, the legislative powers of the city council may be exercised in a manner determined by it.

(b) *Quorum:* The presence of five (5) members shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time. Except as otherwise provided by general law or by this charter, the affirmative vote of five (5) members shall be required to adopt any ordinance or appropriation order.

(c) *Rules of procedure:* The city council shall from time to time adopt rules regulating its procedures, which shall be in addition to the following:

- (i) Regular meetings of the city council shall be held at a time and place fixed by ordinance.
- (ii) Special meetings of the city council shall be held at the call of the council president, or, on the call of any three or more members, by written notice delivered in hand or to the place of residence of each member and which contains a listing of the items to be acted upon. Except in case of an emergency, of which the council president shall be judge, such notice shall be delivered at least forty-eight (48) hours in advance of the time set for such meeting. A copy of the notice to members shall, forthwith, be posted upon the city bulletin board.
- (iii) All sessions of the city council and of every committee or subcommittee thereof, shall at all times be open to the public and to the press, unless another provision is made by law.
- (iv) A full, accurate, up-to-date account of the proceedings of the city council and of every committee and sub-committee thereof shall be kept, which account shall include a



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record of each vote taken, and which shall be made available with reasonable promptness following each meeting.

## Sec. 2-7. Access to information.

(a) *In general:* The city council may make investigations into the affairs of the city and into the conduct and performance of any city agency and for this purpose may subpoena witnesses, administer oaths and require the production of evidence.

(b) *City officers, members of city agencies, employees:* The city council or any committee or sub-committee thereof may require any city officer, member of a city agency or city employee to appear before it to give such information as the city council may require in relation to the municipal services, functions, powers, or duties which are within the scope of responsibility of such person and within the jurisdiction of the city council.

(c) *Mayor:* The city council may require the mayor to provide specific information to it on any matter within the jurisdiction of the city council. The city council may require the mayor to appear before it, in person, to respond to written questions made available to the mayor at the time the request to attend is made to the mayor to provide specific information on the conduct of any aspect of the business of the city. The mayor may bring to such meeting any assistant, department head or other city officer or employee the mayor may deem necessary to assist in responding to the questions posed by the city council.

(d) *Notice:* The city council shall give not less than five (5) days notice to any person it may require to appear before it under the provisions of this section. The notice shall include specific questions on which the city council seeks information and no person called to appear before the city council under this section shall be required to respond to any question not relevant or related to those presented in advance and in writing. Notice shall be by delivery in hand, or by registered or certified mail to the last known place of residence of any such person.

## Sec. 2-8. Officers elected by city council.

(a) *Budget/management analyst:* The city council shall elect a budget/management analyst to serve for a term of three (3) years and until a successor is chosen and qualified. The budget/management analyst shall perform a legislative oversight and a post audit function and shall not be involved in the day-to-day administrative detail of the financial operations of the city. The budget/management analyst shall have free access to all books, accounts, bills and vouchers of the city and shall continuously review and examine the same. The budget/management analyst shall make periodic reports thereon to the city council, with such frequency as the city council by ordinance, by rule or by other vote may direct, but not less frequently than quarterly. All officials of the city shall cooperate with the budget/management analyst in the performance of this oversight function. The budget/management analyst shall have such other powers and duties as may be provided by charter, by ordinance or by other vote of the city council.

(b) *City clerk:* The city council shall elect a city clerk to serve for a term of two (2) years and until a successor is chosen and qualified. The city clerk shall have the powers and duties relating to the keeping of records and vital statistics, the regulation and conduct of elections and the issuance of licenses as are provided to city clerks by general laws and such additional powers and duties as may be provided by general laws, by charter, by ordinance or by other vote of the city council.

(c) *Clerk of the council:* The city council shall elect a clerk of the council, who may be the city clerk, to serve for a term of two (2) years and until a successor is chosen and qualified. The clerk of the council shall give notice of its meetings to its members and to the public, keep the journal of its proceedings and perform such other duties as may be provided by ordinance or by other vote of the city council.

(d) *Salaries/compensation:* The officers appointed or elected by the city council shall receive such salaries or other compensation as may from time to time be provided for such office, by ordinance.



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(e) *Removal/suspension:* Any person appointed or elected by the city council may be removed or suspended by the city council by the use of procedures substantially the same as those contained in section 8-15.

#### Sec. 2-9. Ordinances and other measures.

(a) *Emergency ordinances:* No ordinance shall be passed finally on the date it is introduced, except in case of emergency involving the health or safety of the people or their property.

No ordinance shall be regarded as an emergency ordinance unless the emergency is defined and declared in a preamble to such ordinance, separately voted upon and receiving the affirmative vote of six (6) or more members of the city council.

Emergency ordinances shall stand repealed on the sixty-first day following their adoption, unless an earlier date is specified in the measure, or unless a second emergency measure adopted in conformity with this section is passed extending it, or unless a measure passed in conformity with the procedures for measures generally has been passed extending it.

(b) *Measures, in general:* The city council may pass a measure through all of its stages at any one (1) meeting, except proposed ordinances, appropriation orders and loan authorizations, provided that no member of the city council shall object; but, if any single member objects, a vote on the measure shall be postponed to the next meeting of the city council.

On the first occasion that the question of adopting any measure is put to the city council, except an emergency measure as defined in section 2-9(a), if a single member objects to the taking of a vote, the vote shall be postponed until the next meeting of the city council regular or special. If when the matter is next taken up for a vote, three or more members object to the taking of the vote, the matter shall be further postponed for not less than an additional five (5) days. This procedure shall not be used more than once for any measure notwithstanding any amendments made to the original measure.

(c) *Publication:* Every proposed ordinance, appropriation order or loan authorization (except

emergency ordinances as provided in section 2-9(a)) shall be published once in full in a local newspaper, and in any additional manner as may be provided by ordinance, at least ten (10) days before its final passage. After final passage, it shall be posted on the city bulletin board and otherwise published as may be required by ordinance. Provided, however, that whenever a proposed ordinance or codification of ordinances or other measure would exceed in length more than ten column inches of ordinary newspaper notice print, then, in lieu of publication in a local newspaper, the same may be published and made available at the office of the city clerk in booklet or pamphlet form, and, if so published and available at least ten (10) days before its final passage, shall be deemed sufficient notice. Whenever the city council provides for publication in a booklet or pamphlet in lieu of the newspaper publication, it shall, at least ten (10) days before final passage, publish in a local newspaper a general summary of the proposed ordinance, or ordinances, and a notice stating the times and places at which copies of the booklet or pamphlet may be obtained by the public.

(d) *Council reconsideration:* The clerk of the city council shall hold every measure adopted by the city council for a period of twenty-four hours, Sundays and legal holidays excepted, and if during said time notice of an intent to file a motion to reconsider the matter is filed with the clerk of the council by a member entitled to make such a motion, the measure shall be returned to the city council for further action. If no such statement of intent is filed with the clerk of the council during such period the clerk shall, at the expiration of the said twenty-four hour period, forthwith present the matter to the mayor.

#### Sec. 2-10. Council review of certain appointments.

The mayor shall submit to the city council the name of each person the mayor desires to appoint to any city office, as a department head or as a member of a multiple-member body, but not including any position which is subject to the civil service law. The city council shall refer each such name as is submitted to it to a standing committee of the city council which shall investigate each

such candidate for appointment and may make a report, with recommendations, to the full city council not less than seven (7) nor more than twenty-one (21) days following such referral. The committee may require any person whose name has been referred to it to appear before the committee, or before the city council, to give such information relevant to such appointment as the committee, or the city council, may require.

Appointments made by the mayor shall become effective on the thirtieth day following the date on which notice of the proposed appointment was filed with the clerk of the council, unless the city council shall within the said thirty (30) days vote to reject such appointment, or unless the city council has sooner voted to affirm the appointment. Rejection by the city council shall require a two-thirds ( $\frac{2}{3}$ ) vote of the full council, except that an appointment to a multiple member body may be rejected by a majority vote of the full council. The question on rejection of any appointment made by the mayor shall not be subject to the procedure of charter objection provided in section 2-9 (b) of this Charter.

#### Sec. 2-11. Filling of vacancies.

(a) *Councillor-at-large*: If a vacancy shall occur in the office of councillor-at-large during the first eighteen (18) months of the term for which councillors are elected, the vacancy shall be filled in descending order of votes received by the candidate for the office of councillor-at-large at the preceding city election who received the largest number of votes without being elected, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty (30) percent of the vote total received by the person receiving the largest number of votes for the office of councillor-at-large at the said election. The city clerk shall certify such candidate to the office of councillor-at-large to serve for the balance of the then unexpired term.

If a vacancy shall occur in the office of councillor-at-large during the last six (6) months of the term for which councillors-at-large are elected, such vacancy shall be filled by the person at the biennial city election who receives the highest number of votes for the office of councillor-at-

large and who is not then serving as a councillor-at-large. Such person shall forthwith be certified and shall serve for the last two (2) months of the concluding term in addition to the term for which such person was elected.

(b) *Ward councillor*: If a vacancy shall occur in the office of ward councillor, it shall be filled in the same manner as provided in section 2-11(a) for the office of councillor-at-large except that the list shall be of the candidates for the office of ward councillor in the ward in which the vacancy occurs, provided, however, if there be no candidate on such list who remains eligible and willing to serve, the next highest ranking candidate from among the candidates for election to the council at large who is a resident of the ward in which the vacancy exists shall be certified and shall serve until the next regular election provided such candidate remains a resident of the ward, is willing to serve as a ward councillor and received votes in the ward at least equal to thirty (30) percent of the vote total received by the person receiving the largest number of votes for the office of ward councillor at the said election. If the vacancy shall occur by reason of an incumbent ward councillor filling a vacancy in the office of councillor-at-large, as provided in the penultimate sentence of (a) above, such vacancy shall be filled by the person at the biennial city election who receives the highest number of votes for the office of ward councillor from that ward. Such person shall forthwith be certified and shall serve for the last two (2) months of the concluding term in addition to the term for which such person was elected. The city clerk shall certify such candidate to the office of ward councillor to serve for the balance of the then unexpired term.

(c) *Filling of vacancies by city council*: Whenever a vacancy shall occur in the office of councillor-at-large or in that of ward councillor and there is no available candidate to fill such vacancy in the manner provided in section 2-11(a) or (b), the vacancy shall be filled by the remaining members of the city council. Persons elected to fill a vacancy by the city council shall serve only until the next regular election at which time the vacancy shall be filled by the voters and the person chosen to fill such vacancy shall forthwith be sworn and shall serve for the remainder of the unexpired term in

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addition to the term for which elected. Persons serving as city councillors under this section shall not be entitled to have the words "candidate for re-election" printed against their names on the election ballot.

## ARTICLE 8. EXECUTIVE BRANCH

## Sec. 3-1. Mayor: qualifications; term of office; compensation.

(a) *Mayor, qualifications:* The chief executive officer of the city shall be a mayor, elected by and from the voters of the city at large. Any voter shall be eligible to hold the office of mayor. The mayor shall devote full time to the office and shall not hold any other elective public office, nor shall the mayor be actively engaged in any other business, occupation or profession during the period of service as mayor.

(b) *Term of office:* The term of office of the mayor shall be two (2) years beginning on the first Monday of January following the biennial city election at which chosen and until a successor is qualified.

(c) *Compensation:* The city council shall, by ordinance, establish an annual salary for the mayor. No ordinance increasing the salary of the mayor shall be effective unless it shall have been adopted in the first twelve (12) months of the term for which councillors are elected and it provides that such salary is to become effective in January of the year following the next biennial city election.

## Sec. 3-2. Executive powers; enforcement of ordinances.

The executive powers of the city shall be vested solely in the mayor, and may be exercised by the mayor either personally or through the several city agencies under the general supervision and control of the office of the mayor. The mayor shall cause the charter, the laws, the ordinances and other orders for the government of the city to be enforced, and shall cause a record of all official acts of the executive branch of the city to be kept.

The mayor shall exercise a general supervision and direction over all city agencies, unless other-

wise provided by law, by the charter or by ordinance. Each city agency shall furnish to the mayor, forthwith upon request, any information, materials or otherwise as the mayor may request and as the needs of the office and the interest of the city may require.

The mayor shall be the chief procurement officer for the city responsible for buying, purchasing, renting, leasing, or otherwise acquiring all supplies and all services for all departments and all activities of the city and including all functions that pertain to the obtaining of a supply or a service, including description of requirements, selection and solicitation of sources, preparation and award of all contracts and all phases of contract administration. The mayor may delegate all or any portion of such powers and duties to a subordinate officer, but, no such delegation shall in any way absolve the mayor from the ultimate responsibility for all procurement activities.

The mayor shall supervise, direct and be responsible for the efficient administration of all city activities and functions placed under the control of the mayor by law, by this charter, by ordinance or otherwise. The mayor shall be responsible for the efficient and effective coordination of the activities of all agencies of the City of Beverly and for this purpose shall have authority consistent with law to call together for consultation, conference and discussion at all reasonable times, all persons serving the city, whether elected directly by the voters, chosen by persons elected directly by the voters, or otherwise.

The mayor shall hold no other city office or city employment for which a salary or other emolument is payable from the city treasury. No former mayor shall hold any compensated appointed city office or city employment until one (1) year following the date on which such former mayor's city service has terminated.

## Sec. 3-3. Appointments by the mayor.

The mayor shall appoint, subject to the review of such appointments by the city council as provided in section 2-10, all city officers, department heads and the members of multiple-member bodies for whom no other method of appointment or selection is provided by the charter, excepting



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only persons serving under the school committee, and persons serving under the city council. Except as may otherwise be required by the civil service law, appointments made by the mayor shall be for periods not to exceed three (3) years, provided, however, the mayor may appoint the head of a department related to the public safety for a term of not less than three (3) nor more than five (5) years. The mayor may suspend or remove any person appointed by the mayor in accordance with the procedure established in section 3-4. The decision of the mayor in suspending or removing a department head shall be final. All persons categorized as department heads shall, subject to the consent of the mayor, appoint all assistants, subordinates and other employees of the agency for which such person is responsible. The department head may suspend or remove any assistant, subordinate or other employee of the agency for which such person is responsible in accordance with the procedures established in section 8-15. The decision of the department head to suspend or remove any assistant, subordinate or other employee shall be subject to review by the mayor. A person for whom a department head has determined a suspension or removal is appropriate may seek review of such determination by the mayor by filing a petition for review, in the office of the mayor, in writing, within ten (10) days following receipt of notice of such determination. The review by the mayor shall follow the procedures of section 8-15. The decision of the mayor shall be final.

#### Sec. 3-4. Removal or suspension of certain officials.

(a) *In general:* The mayor may, in writing, remove or suspend any city officer, member of a multiple member body, or the head of any city department appointed by the mayor by filing a written statement, with the city clerk, setting forth in precise detail the specific reasons for such removal or suspension. A copy of the written statement shall be delivered in hand, or mailed by certified mail, postage prepaid, to the last known address of the said city officer, member of a multiple member body, or head of a department. The said city officer, member of a multiple member body, or head of a department may make a

written reply by filing such a reply statement, with the city clerk, within ten (10) days following the date the statement of the mayor has been filed; but, such reply shall have no effect upon the removal or suspension unless the mayor shall so determine. The said city officer, member of a multiple member body, or head of a department may request permission to appear at a public meeting of the city council to read the written reply concerning removal or suspension. If permission for said city officer, member of a multiple member body, or head of a department to attend a meeting of the city council is granted for such purpose, the mayor may attend the same meeting to read the statement of removal or suspension filed by the mayor in the first instance. The city council shall have no authority to vote or otherwise express its views concerning such removal or suspension.

(b) *Public safety:* The mayor may, in writing, remove or suspend the head of any city department relating to the public safety appointed by the mayor by filing a written statement, with the city clerk, setting forth in precise detail the specific reasons for such removal or suspension. A copy of the written statement shall be delivered in hand, or, mailed by certified mail, postage prepaid, to the last known address of the said head of a department. The said city officer or head of a department may make a written reply by filing such a reply statement, with the city clerk, within ten (10) days following the date the statement of the mayor has been filed; but, such reply shall have no effect upon the removal or suspension unless the mayor shall so determine. The said city officer or head of a department may request permission to appear at a public meeting of the city council to contest the decision of the mayor concerning a removal from office and to read the written reply filed with the city clerk concerning such removal. If permission for said head of a department to attend a meeting of the city council is granted for such purpose the mayor may attend the same meeting to read the statement of removal filed by the mayor in the first instance. The city council shall have the authority to vote to approve or disapprove of the action of the mayor, but, it shall have no other power to otherwise express its views concerning such removal or

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suspension. The removal shall not take effect unless at least five (5) members of the city council shall vote to confirm the action of the mayor.

### Sec. 3-5. Temporary appointments to city offices.

Whenever a vacancy, either temporary or permanent, occurs in a city office and the needs of the city require that such office be filled, the mayor may designate the head of another city agency or a city officer or city employee, or some other person to perform the duties of the office on a temporary basis until such time as the position can be filled as otherwise provided by law, by the charter or by ordinance. The mayor shall file a certificate in substantially the following form, with the city clerk, whenever a person is designated under this section:

I designate (name of person) to perform the duties of the office of (designate office in which vacancy exists) on a temporary basis until the office can be filled by (here set out the regular procedure for filling the vacancy, or when the regular officer shall return). I certify that said person is qualified to perform the duties which will be required and that I make this designation solely in the interests of the City of Beverly.

(signed)  
Mayor

Persons serving as temporary officers under the authority of this section shall have only those powers of the office indispensably essential to the performance of the duties of the office during the period of such temporary appointment and no others. No temporary appointment shall be for more than thirty (30) days and not more than one (1) renewal of a temporary appointment may be made when a permanent vacancy exists in the office.

### Sec. 3-6. Communications; special meetings.

(a) *Communications to the city council:* Within six (6) weeks following the start of each fiscal year, the mayor shall submit to the city council, and make available for public distribution, a complete report on the financial and administrative activities of the city for the preceding fiscal year. The mayor shall, from time to time throughout

the year, by written communications, recommend to the city council for its consideration such measures as, in the judgment of the mayor, the needs of the city require. The mayor shall, from time to time throughout the year, but at least quarterly, by written communications, keep the city council fully informed of the financial and administrative condition of the city and shall specifically indicate in any such reports any fiscal, financial or administrative problems of the city.

(b) *Special meetings of the city council:* The mayor may at any time call a special meeting of the city council, for any purpose, by causing a notice of such meeting to be delivered in hand or to the place of business or residence of each member of the city council. Such notice shall, except in an emergency of which the mayor shall be the sole judge, be delivered at least forty-eight (48) weekday hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall, forthwith, be posted on the city bulletin board.

### Sec. 3-7. Approval of mayor, exception (veto).

Every order, ordinance, resolution or vote adopted or passed by the city council relative to the affairs of the city, except memorial resolutions, the selection of city officers by the city council and any matters relating to the internal affairs of the city council, shall be presented to the mayor for approval. If the mayor approves of the measure, the mayor shall sign it; if the mayor disapproves of the measure, the mayor shall return the measure, with the specific reason or reasons for such disapproval attached thereto, in writing, to the city council. The city council shall enter the objections of the mayor on its records, and not sooner than ten (10) days, nor after thirty (30) days from the date of its return to the city council, shall again consider the same measure. If the city council, notwithstanding such disapproval by the mayor, shall again pass the order, ordinance, resolution or vote by a two-thirds (2/3) vote of the full council, it shall then be deemed in force, notwithstanding the failure of the mayor to approve the same. If the mayor has neither signed a measure nor returned it to the city council within ten (10) days

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following the date it was presented to the mayor, the measure shall be deemed approved and in force.

### Sec. 3-8. Temporary absence of the mayor.

(a) *Acting mayor:* Whenever, by reason of sickness, absence from the city or other cause, the mayor shall be unable to perform the duties of the office for a period of five (5) successive working days or more, the president of the city council shall be the acting mayor. In the event of the absence or disability of the president of the city council, the vice-president of the city council shall serve as acting mayor.

The mayor shall, by a letter filed with the city council and a copy filed with the city clerk, designate a qualified city officer or city employee to exercise the powers and perform the duties of the office during the temporary absence of the mayor for periods of less than five (5) days and to serve only when the needs of the city require and only to the extent necessary under the then circumstances.

(b) *Powers of acting mayor:* The acting mayor shall have only those powers of the mayor as may be necessary to the conduct of the business of the city in an orderly and efficient manner and which may not be delayed. The acting mayor shall have no authority to make any permanent appointment or removal from city service unless the disability of the mayor shall extend beyond sixty (60) days nor shall an acting mayor approve or disapprove of any measure adopted by the city council unless the time within which the mayor must act would expire before the return of the mayor. During any period in which any member of the city council is serving as acting mayor, such councillor shall not vote as a member of the city council.

### Sec. 3-9. Vacancy in office of mayor.

(a) *Special election:* If a vacancy in the office of mayor occurs in the first fifteen (15) months of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, incapacity or otherwise the city council shall forthwith order a special election, to be held

within ninety (90) days following the date the vacancy is created, to fill such vacancy for the balance of the then expired term.

(b) *Council election:* If a vacancy in the office of mayor occurs in the last nine (9) months of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, or otherwise, the president of the city council shall become the mayor. Upon the qualification of the president of the city council as the mayor, under this section, a vacancy shall exist in that council seat on the city council which shall be filled in the manner provided in section 2-10.

(c) *Powers, term of office:* The mayor elected under Section 3-9 (a) or (b) shall have all the powers of the mayor. A person elected pursuant to subsection (a), above, shall serve for the balance of the term unexpired at the time of election to the office. A person chosen pursuant to subsection (b), above, shall serve until the time of the next regular election at which time the person elected to fill the office for the ensuing term of office shall serve, in addition for the balance of the then unexpired term.

## ARTICLE 4. SCHOOL COMMITTEE

### Sec. 4-1. School committee.

(a) *Composition, term of office:* There shall be a school committee which shall consist of seven (7) members. Six (6) of these members, to be known as ward school committee members, shall be nominated and elected by and from the voters of each ward, one such ward school committee member to be elected from each of the six (6) wards into which the city is divided, in accordance with section 7-5. The mayor shall serve as the seventh member of the school committee. The term of office for all school committee members shall be for two (2) years each, beginning on the first Monday of January in the year following their election, and until their successors have been qualified.

(b) *Eligibility:* A ward school committee member shall at the time of election be a voter of the ward from which elected, provided, however, if any ward school committee member shall, during



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the first eighteen (18) months of the term of office, remove to another ward in the city, such office shall be deemed vacant and the balance of the unexpired term shall be filled in the manner provided in section 4-1(f). If such removal occurs after the first eighteen (18) months of the term of office, such school committee member may continue to serve for the balance of the term for which elected. If a ward school committee member removes from the city during the term for which elected such office shall immediately be deemed vacant and filled in the manner provided in section 4-1(f).

(c) *Powers and duties:* The school committee shall have all powers which are conferred on school committees by general laws and such additional powers and duties as may be provided by the charter, by ordinance, or otherwise and not inconsistent with said grant of powers conferred by general laws. The powers and duties of the school committee shall include the following:

- (1) To elect a superintendent of the schools who shall be charged with the day-to-day administration of the school system, subject only to policy guidelines and directives adopted by the school committee;
- (2) To make all reasonable rules and regulations for the management of the public school system and for conducting the business of the school committee as may be deemed necessary or desirable;
- (3) To adopt and administer an annual operating budget for the school department, subject to appropriation by the city council.

The school committee shall have general charge and superintendence of all school buildings and grounds, shall furnish all school buildings with proper fixtures, furniture and equipment and shall provide ordinary maintenance of all school buildings and grounds; provided, however, the city council may, by ordinance, provide for the establishment of a central municipal maintenance department which may include maintenance of school buildings and grounds. Whenever the school committee shall determine that additional classrooms are necessary to meet the educational needs of the community, at least one (1) member of the school committee, or designee of

the school committee, shall serve on the agency, board or committee to which the planning or construction of such new, remodeled or renovated school building is delegated.

(d) *Prohibitions:* No member of the school committee shall hold any other city office or city employment for which a salary or other emolument is payable from the city treasury. No former member of the school committee shall hold any compensated appointed city office or city employment until one (1) year following the date on which such member's service on the school committee has terminated.

(e) *Salary:* The city council may, by ordinance, provide an annual salary for the members of the school committee. No ordinance increasing such salary shall be effective, however, unless it shall have been adopted during the first twelve (12) months of a term of office and it provides that such salary is to take effect with the organization of the city government following the next biennial election.

(f) *Filling of vacancies:* If a vacancy shall occur in the office of ward school committee member during the first twenty (20) months of the term for which school committee members are elected, the vacancy shall be filled in descending order of votes received by the candidate for the office of ward school committee member from that ward at the preceding city election who received the largest number of votes without being elected, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty (30) percent of the vote total received by the person receiving the largest number of votes for the office of ward school committee member in that ward. If there be no such candidate eligible and willing to serve, the vacancy shall be filled by a majority vote of the remaining members of the school committee and the city council sitting in joint convention, from among the voters of the ward. If the vacancy shall occur during the last four (4) months of the term of office such vacancy shall be filled by the person at the biennial city election who receives the highest number of votes for the office of ward school committee member from that ward. Such person shall forthwith be certified and shall serve for the

last two (2) months of the concluding term in addition to the term for which such person was elected. The city clerk shall certify such candidate to the office of ward school committee member to serve for the balance of the then unexpired term.

#### Sec. 4-2. School committee president.

(a) *Election and term:* The school committee shall organize by electing one of the ward school committee members to serve as school committee president during the ensuing term of office.

(b) *Powers and duties:* The school committee president shall preside at all meetings of the school committee, regulate its proceedings and shall decide all questions of order. The school committee president shall appoint all members of all committees of the school committee, whether special or standing. The school committee president shall have the same powers to vote upon all measures coming before the school committee as any other member of the school committee. The school committee president shall perform such other duties consistent with the office as may be provided by charter, by ordinance or by other vote of the school committee.

#### Sec. 4-3. School committee budget.

The mayor and city council shall annually provide an amount of money sufficient for the support of the public schools as required by the General Laws. In acting on appropriations for educational costs, the city council shall vote on the total amount of appropriations requested, and shall not allocate appropriations among accounts or place any restrictions on such appropriations. The city council may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations. The vote of the city council shall establish the total appropriation for the support of the schools, but may not limit the authority of the school committee to determine expenditures within the total appropriations.

### ARTICLE 5. ADMINISTRATIVE ORGANIZATION.

#### Sec. 5-1. Organization of city agencies.

The organization of the city into operating agencies for the provision of services and the

administration of the government may be accomplished through either of the methods provided in this article.

(a) *Ordinances:* Subject only to express prohibitions in a general law or the provisions of this charter, the city council may, by ordinance, reorganize, consolidate, create, merge, divide or abolish any city agency, in whole or in part; establish such new city agencies as it deems necessary or advisable; determine the manner of selection, the term of office and prescribe the functions of all such entities; provided, however, that no function assigned by this charter to a particular city agency may be discontinued, or assigned to any other city agency, unless this charter specifically so provides.

(b) *Administrative code:* The mayor may from time to time prepare and submit to the city council plans of organization or reorganization which establish operating divisions for the orderly, efficient or convenient conduct of the business of the city.

Whenever the mayor proposes such a plan, the city council shall hold one (1) or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time and place at which the hearing will be held, not less than seven (7) nor more than fourteen (14) days following said publication.

An organization or reorganization plan shall become effective at the expiration of sixty (60) days following the date the proposal is submitted to the city council unless the city council shall, by a majority vote, within such period vote to disapprove the plan. The city council may vote only to approve or to disapprove the plan and may not vote to amend or to alter it.

The mayor may, through the administrative code, and subject only to express prohibitions in a general law or this charter, reorganize, consolidate or abolish any city agency, in whole or in part; establish such new city agencies as is deemed necessary to the same extent as is provided in section 5-1(a), above, for ordinances; and for such



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purpose may transfer the duties and powers and, so far as is consistent with the use for which the funds were voted by the city, transfer the appropriation of one city agency to another; provided, however, that no function assigned by this charter to a particular city agency may be discontinued or assigned to any other city agency unless this charter specifically so provides.

#### Sec. 5-2. Publication of administrative code.

For the convenience of the public, the administrative code and any amendments to it shall be printed as an integral part of the ordinances of the City of Beverly.

#### Sec. 5-3. Merit principle.

All appointments and promotions of city officers and employees shall be made on the basis of merit and fitness demonstrated by examination, past performance, or by other evidence of competence and suitability. Each person appointed to fill an office or position shall be a person especially fitted by education, training and previous work experience to perform the duties of the office or position for which chosen.

#### Sec. 5-4. Department of municipal finance.

(1) *Establishment, scope:* There shall be a department of municipal finance responsible for the performance of all of the fiscal and financial activities of the city. The department of municipal finance shall assume all of the duties and responsibilities related to municipal finance activities which prior to the adoption of the home rule charter were performed by or under the authority of the city auditor, the city treasurer, the city collector, the chief procurement officer and the board of assessors; and it may have such additional powers, duties and responsibilities with respect to municipal finance related functions and activities as the city may from time to time provide, by ordinance.

(2) *Director of municipal finance.* The department of municipal finance shall be under the direct control and supervision of a director of municipal finance who shall be appointed by and who shall be responsible to the mayor. The mayor shall also appoint the person, or persons, perform-

ing the duties of city collector and city treasurer. The director of municipal finance shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of municipal finance shall be responsible for the supervision and coordination of all activities of the department of municipal finance in accordance with state statutes, city ordinances, administrative code and rules and regulations. The director of municipal finance shall serve, ex officio, as the mayor may from time to time specify, as the city treasurer, collector, or treasurer-collector.

#### Sec. 5-5. Department of planning and development.

(1) *Establishment, scope:* There shall be a department of planning and development responsible for the coordination of all the planning and development related activities of the city. The department of planning and development shall be responsible for the coordination of all of the duties and responsibilities related to planning and development activities which prior to the adoption of the home rule charter were performed by or under the authority of the planning board, board of appeals, and the conservation commission; and it may have such additional powers, duties and responsibilities with respect to the coordination of planning and development related functions and activities as the city may from time to time provide, by ordinance and which may include the coordination of all land acquisition and land management proposals, economic development planning, the preparation of a comprehensive or master plan and maintenance of a centralized source of records, reports, statistical data and other planning and development related materials.

(2) *Director of planning and development:* The department of planning and development shall be under the direct control and supervision of a director of planning and development who shall be appointed by and who shall be responsible to the mayor. The director of planning and development shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of planning and development shall be responsible for the supervision and coordination of all activities of the de-

partment of planning and development in accordance with state statutes, city ordinances, administrative code and rules and regulations.

**Sec. 5-6. Planning and construction of buildings and other facilities.**

(a) *Composition, mode of appointment and term of office:* There shall be a permanent building and other facilities planning and construction committee (which may be referred to as the planning and construction committee) consisting of seven members. Six (6) of the committee members shall be appointed by the mayor for terms of three (3) years each, so arranged that the term of two (2) members shall expire each year. In making appointments to the committee, the mayor shall seek persons having experience in the fields of architecture, engineering, construction, real estate or law. The seventh member of the committee shall be designated by the school committee and may, but need not, be a member of the school committee.

(b) *Powers and duties:* The buildings and other facilities planning and construction committee shall be responsible for monitoring the physical condition of all municipal buildings and other facilities. The committee shall meet from time to time with representatives of municipal agencies to evaluate the need for additions, renovations or remodeling of any existing building or facility or for the construction of new buildings or other facilities. The committee shall file written reports, at least annually with the mayor in which it shall make recommendations as to the need for any project or projects.

Whenever any construction work on any municipal building or other facility is authorized, the buildings and other facilities planning and construction committee shall be responsible for all work in connection with the project including site planning, surveying, engineering studies, architectural plans and specifications and the supervision of construction.

**Sec. 5-7. Department of human resources.**

(1) *Establishment, scope:* There shall be a department of human resources which shall be responsible for all personnel and employee-

related functions and activities of the city government and its administration. The department of human resources shall assume all of the duties and responsibilities related to human resources activities which, prior to the adoption of the home rule charter, were performed by or under the authority of the city auditor, the city treasurer, and the heads of city agencies; and it may have such additional powers, duties and responsibilities with respect to human resources related functions and activities as the city may from time to time provide, by ordinance. The functions of the department shall include the following:

1. Plan, administer and direct all phases of all municipal personnel plans and collective bargaining agreements, including job description, position classification, sick and vacation day administration, accident prevention programs, employee grievance procedures, physical examination processing, testing, review and evaluation of work records and all other record keeping related to city employees.
2. Develop new and revised personnel policies and practices to maintain and keep current the existing high standards for municipal personnel.
3. Review and evaluate all requests for new or additional personnel made by city agencies and make recommendations to the mayor.
4. Advise and assist all agency heads and employees in all aspects of municipal personnel matters including recruitment, promotion, transfer, training, wages, insurance and other benefits of employment.

(2) *Director of human resources.* The department shall be headed by a director of human resources appointed by the mayor and who shall be responsible to the mayor. The director of human resources shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of human resources shall be responsible for the supervision and coordination of all activities of the department of human resources and development in accordance with state statutes, city ordinances, administrative code and rules and regulations.

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**Sec. 5-8. Department of municipal inspections.**

(1) *Establishment, scope:* There shall be a department of municipal inspections which shall be responsible for the coordination of all inspection functions performed by any city officer, employee or agent. The department of municipal inspections shall be responsible for the coordination of all of the inspection functions conducted by the city, including, but not limited to, those required under the zoning or any other city ordinance, the provisions of the Code of Massachusetts Regulations relating to buildings, electrical wiring, plumbing, gas fitting, sanitation, wetlands, fire protection and fire safety, hazardous materials, local regulations adopted by the board of health, conservation commission, historical commission, planning board and every other local inspection as may be otherwise authorized or conducted. The department of municipal inspections shall have such additional powers, duties and responsibilities with respect to the coordination of municipal inspection functions as the city may from time to time provide by ordinance and which may include the maintenance of all records relating to inspections in a central place through a common index, a single application process which would indicate all inspections which might be necessary for a particular project and provide for a consolidated, coordinated review and processing of each such application.

(2) *Director of municipal inspections:* The department of municipal inspections shall be under the direct control and supervision of a director of municipal inspections who shall be appointed by the mayor and who shall be responsible to the mayor. The director of municipal inspections shall be a person especially fitted by education, experience and training to perform the duties of the office. The director of municipal inspections shall be responsible for the supervision and coordination of all activities of the department of municipal inspections in accordance with state statutes, city ordinances, administrative code and rules and regulations. The director of municipal inspections shall in addition to the coordination responsibilities assigned by this provision also perform the duties of building inspector or any other position within the department as the mayor may from time to time specify.

**ARTICLE 6. FINANCE AND FISCAL PROCEDURES****Sec. 6-1. Fiscal year.**

The fiscal year of the city shall begin on the first day of July and shall end on the last day of June, unless another period is required by general law.

**Sec. 6-2. School committee budget.**

(a) *Public hearing:* At least seven (7) days before the meeting at which the school committee is scheduled to vote on its final budget request, the school committee shall cause to be published in a local newspaper a general summary of its proposed budget. The summary shall specifically indicate any major variations from the current budget, and the reasons for such changes. It shall further indicate the times and places at which complete copies of its proposed budget are available for examination by the public, and the date, time and place when and where a public hearing will be held by the school committee on the proposed budget. The school committee shall not take its final vote on its proposed budget until all persons who desire to be heard concerning the budget proposal have had an opportunity to be heard.

(b) *Submission to mayor:* The budget as adopted by the school committee shall be submitted to the mayor at least twenty-one (21) days before the date the mayor is required to submit a proposed city budget to the city council to allow the mayor sufficient time within which to consider the effect the school department's requested appropriation will have upon the total city operating budget the mayor is required to submit under this article.

**Sec. 6-3. Submission of budget and budget message.**

Within the time fixed by law, before the start of the fiscal year of the city, the mayor shall submit to the city council a proposed operating budget for the ensuing fiscal year with an accompanying budget message and supporting documents. The mayor shall simultaneously provide for the publication in a local newspaper of a notice and a general summary of the proposed budget. The summary shall specifically indicate any major



variations from the current operating budget and the reason for such changes. The notice shall further indicate the times and places at which complete copies of the proposed operating budget for the city are available for examination by the public.

#### Sec. 6-4. Budget message.

The budget message of the mayor shall explain the budget for all city agencies both in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the city for the ensuing fiscal year, describe important features of the budget, indicate any major variations from the current fiscal year in financial policies, expenditures and revenues together with the reasons for such changes, summarize the city's debt position and include other material as the mayor deems desirable, or as may be required by the provisions of a city ordinance.

#### Sec. 6-5. The budget.

The proposed operating budget shall provide a complete financial plan for all city funds and city activities for the ensuing fiscal year. Except as may otherwise be required by general law, or this charter, it shall be in the form which the mayor deems desirable or as a city ordinance may require. In the presentation of the budget, the mayor shall utilize modern concepts of fiscal presentation so as to furnish an optimum level of information and the best financial control. The budget shall show in detail all estimated income from the proposed property tax levy and from all other sources and all proposed expenditures, including debt service, for the following year. The budget shall be arranged to show the actual and estimated income and expenditures for the previous, current and ensuing fiscal years and shall indicate in separate sections:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by city agency and position in terms of work programs, and the method of financing such expenditures;
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by city agency, and the proposed method of financing each such capital expenditure;

- (c) The relationship of each proposed capital expenditure to the capital improvement program required to be submitted under section 6-8; and

- (d) Estimated surplus revenue and free cash at the end of the current fiscal year, including estimated balances in any special accounts established for specific purposes.

#### Sec. 6-6. Action on the budget.

- (a) *Public hearing:* Forthwith upon its receipt of the proposed operating budget, the city council shall provide for the publication in a local newspaper of a notice stating the time and place, not less than seven (7) nor more than fourteen (14) days following such publication, at which it will hold a public hearing on the proposed operating budget as submitted.

- (b) *Review:* The city council shall consider, in open public meetings, the detailed expenditures proposed for each city agency and may confer with representatives of each such agency in connection with its review and consideration. The city council may require the mayor, or any other city agency, to furnish it with such additional information as it may deem necessary to assist it in its review and consideration of the proposed operating budget.

- (c) *Action by city council:* The city council shall adopt the budget, with or without amendments, within sixty (60) days following the day the proposed budget is received by it, or such other period as may be provided by general law. In amending the budget, the city council may delete or decrease any programs or amounts except expenditures required by law, or for debt service. If the city council fails to take any action with respect to any item in the proposed budget within sixty (60) days following the date of its receipt of the proposed budget, or such other period as may be provided by general law, such amount shall, without any action by the city council, become a part of the appropriations for the ensuing fiscal year and shall be available for the purposes specified.

#### Sec. 6-7. Supplementary budgets, other appropriations.

- (a) *Intradepartmental transfers:* With the approval of the mayor, funds appropriated for one

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line item within the appropriation made for a particular municipal agency may be transferred to another line item within the same municipal agency. Whenever such a transfer is authorized by the mayor, notice of the transfer, and the circumstances under which such transfer was deemed advisable, shall be filed with the clerk of the city council.

(b) *Interdepartmental transfers:* With the approval of the city council, funds appropriated to the use of one (1) municipal agency may be transferred to the use of another municipal agency. Requests to the city council for the transfer of funds from one municipal agency to another shall be made by the mayor, in writing, and shall include a statement setting forth the reason the additional funds are needed by the agency to which it is proposed they be transferred and shall be accompanied by a certificate signed by the agency from which the appropriation is proposed to be taken that such transfer will not prevent that agency from performing its vital functions. A copy of this request shall, forthwith, be posted on the city bulletin board. The city council shall, by its rules, provide a procedure governing interdepartmental transfer requests which shall include at least two readings and a public hearing by the city council. Such rule shall specify the circumstances under which notice by publication in a newspaper shall be required and circumstances under which simple posting on the city bulletin board shall be sufficient.

(c) *Supplementary appropriations:* Whenever the mayor shall submit to the city council a request for a new appropriation of any sum of money, either as a supplement to some item in the annual operating budget or for an item, or items, not included in the annual operating budget as adopted, the city council shall not act upon such request until it has (1) given notice by publication in a local newspaper of the request, and (2) held a public hearing concerning such request. The publication of the notice and the public hearing shall be generally in conformity with the provisions of section 6-6(a) concerning the proposed annual operating budget.

**Sec. 6-8. Capital improvement program.**

The mayor shall submit a capital improvement program to the city council at least one hundred fifty (150) days before the start of each fiscal year. It shall include:

- (a) A clear and concise general summary of its contents;
- (b) A list of all capital improvements proposed to be undertaken during the next ensuing five (5) years, with supporting information as to the need for each capital improvement;
- (c) Cost estimates, methods of financing and recommended time schedules for each improvement; and
- (d) The estimated annual cost of operating and maintaining each facility and piece of major equipment involved.

This information is to be annually revised by the mayor with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

**Sec. 6-9. Independent audit.**

The city council shall annually provide for an outside audit of the books and accounts of the city to be made by a certified public accountant, or firm of such accountants.

**ARTICLE 7. ELECTION RELATED MATTERS****Sec. 7-1. City elections: general, preliminary.**

The regular general city election shall be held on the first Tuesday following the first Monday in November in each odd numbered year.

On the sixth Tuesday preceding every regular general city election there shall be a preliminary election for the purpose of nominating candidates.

**Sec. 7-2. Non-partisan elections.**

All elections for city offices shall be non-partisan and election ballots shall be printed without any party mark, emblem, or other designation whatsoever.

**Sec. 7-3. Preliminary election**

(a) *Signature requirements:* The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election shall be as follows: for the office of mayor not less than one hundred (100) such signatures, provided, however, that not more than twenty-five (25) signatures from any one (1) ward shall be counted in the minimum number of required signatures; for the office of councillor-at-large not less than one hundred (100) such signatures, provided, however, that not more than twenty-five (25) signatures from any one (1) ward shall be counted in the minimum number of required signatures; for the office of ward councillor not less than fifty (50) such signatures, all of which shall be from the ward from which the nomination is sought.

(b) *Ballot position:* The order in which names of candidates appear on the ballot for each office shall be determined by a drawing, by lot, conducted by the city clerk which shall be open to the public.

(c) *Determination of candidates:* The two (2) persons receiving at a preliminary election the highest number of votes for nomination for any office shall be the sole candidates for that office whose names shall be printed on the official ballots to be used at the regular general city election at which such office is to be voted upon, and no acceptance of a nomination shall be necessary to its validity. If two (2) or more persons are to be elected to the same office at such regular election, the several persons, in number equal to twice the number so to be elected, receiving at such preliminary election the highest number of votes for nomination for that office shall be the sole candidates for that office whose names shall be printed on the official ballots.

If the preliminary election results in a tie vote among candidates for nomination receiving the lowest number of votes which, but for said tie vote, would entitle a person receiving the same to have his name printed on the official ballots for the election, all candidates participating in said tie vote shall have their names printed on the official ballots, although in consequence thereof

there be printed on such ballots the names of candidates exceeding twice the number to be elected.

(d) *Condition making preliminary unnecessary:* If at the expiration of time for filing statements of candidates to be voted upon at any preliminary election not more than twice as many such statements have been filed with the city clerk for an office as candidates are to be elected to such office, the candidates whose statements have been filed with the city clerk shall be deemed to have been nominated to such office, and their names shall be voted upon for such office at the succeeding general election, and the city clerk shall not print their names on the ballots to be used at said preliminary election and no other nomination to such office shall be made. If in consequence it shall appear that no names are to be printed upon the official ballots to be used in any particular ward or wards of the city, no preliminary election shall be held in such ward or wards.

**Sec. 7-4. Ballot position, regular city election.**

The order in which names of candidates appear on the ballot for each office shall be determined by a drawing, by lot, conducted by the city clerk which shall be open to the public.

**Sec. 7-5. Wards.**

The territory of the city shall be divided into six (6) wards so established as to consist of compact and contiguous territory, bounded insofar as possible by the center line of known streets or ways or by other well-defined limits. Each such ward shall be composed of voting precincts otherwise established in accordance with general laws. The city council shall from time to time, but at least once in each ten (10) years, review such wards to insure their uniformity in number of inhabitants.

**Sec. 7-6. Application of state general laws.**

Except as expressly provided in this charter and authorized by law, all city elections shall be governed by the laws of the commonwealth relating to the right to vote, the registration of voters, the nomination of candidates, the conduct of pre-



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liminary, general and special elections, the submission of charters, charter amendments and other propositions to the voters, the counting of votes, the recounting of votes, and the determination of results.

**Sec. 7-7. Petitions to council or school committee.**

The city council or the school committee shall hold a public hearing and act with respect to every petition which is addressed to it, which is signed by one hundred (100) voters, or more, and which seeks the passage of a measure. The hearing shall be held by the city council or the school committee, or, in either case, by a committee or sub-committee thereof, and the action by the city council or the school committee shall be taken not later than three (3) months after the petition is filed with the clerk of the council or the secretary of the school committee as may be appropriate. Hearings on two (2) or more petitions filed under this section may be held at the same time and place. The clerk of the council or the secretary of the school committee shall mail notice of the hearing to the ten (10) persons whose names appear first on the petition at least forty-eight (48) hours before the hearing. Notice, by publication, of all such hearings shall be at public expense.

**Sec. 7-8. Citizen initiative measures.**

(a) *Commencement:* Initiative procedures shall be started by the filing of an initiative petition with the clerk of the council or the secretary of the school committee, as the case may be. The petition shall be addressed to the city council or to the school committee, shall contain a request for the passage of a particular measure which shall be set forth in full in the petition, and shall be signed by at least ten (10) percent of the total number of voters as of the date of the most recent city election. Signatures to an initiative petition need not all be on one (1) paper, but all such papers pertaining to any one measure shall be fastened together and shall be filed as a single instrument, with the endorsement thereon of the name and residence address of the person designated as

filing the same. With each signature on the petition there shall also appear the street and number of the residence of each signer.

Within ten (10) days following the filing of the petition, the board of registrars of voters shall ascertain by what number of voters the petition has been signed, and what percentage that number is of the total number of voters as of the date of the most recent city election. The city clerk shall attach to the petition a certificate showing the results of their examination and shall return the petition to the clerk of the council or the secretary of the school committee according to how the petition is addressed. A copy of the board of registrars of voters certificate shall also be mailed to the person designated upon such petition as having filed the same.

(b) *Referral to city solicitor:* If the board of registrars of voters determine that a petition has been signed by a sufficient number of voters, the clerk of the council or the secretary of the school committee, as the case may be, shall forthwith following receipt of such certificate deliver a copy of the petition to the city solicitor. The city solicitor shall, within fifteen days following receipt of a copy of the petition, in writing, advise the city council or the school committee, as may be appropriate, whether the measure as proposed may lawfully be proposed by the initiative process and whether, in its present form it may be lawfully adopted by the city council or the school committee. If the opinion of the city solicitor is that the measure is not in proper form, the reply shall state the reasons for such opinion, in full. A copy of the opinion of the city solicitor shall also be mailed to the person designated on the petition as having filed the same.

(c) *Action on petitions:* Within thirty days following the date a petition has been returned to the clerk of the council or the secretary of the school committee by the city solicitor and after publication in accordance with the provisions of section 2-9(c), the city council or the school committee shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure, or by rejecting it. The passage of a measure which is in lieu of an initiative

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measure shall be deemed to be a rejection of the initiative measure. If the city council or the school committee fails to act with respect to any initiative measure which is presented to it within thirty (30) days following the date it is returned to it by the city solicitor, the measure shall be deemed to have been rejected on such thirtieth day. If an initiative measure is rejected, the clerk of the council or the secretary of the school committee shall promptly give notice of that fact to the person designated on the petition as having filed the same, by certified mail.

(d) *Supplementary petitions:* Within forty-five (45) days following the date an initiative petition has been rejected, a supplemental initiative petition may be filed with the clerk of the council or the secretary of the school committee. The supplemental initiative petition shall be signed by a number of additional voters which is equal to five (5) percent of the total number of voters as of the date of the most recent city election. If the number of signatures to such supplemental petition is found to be sufficient by the city clerk, the city council shall call a special election to be held on a date fixed by it not less than forty-five (45) nor more than ninety (90) days following the date of the certificate of the city clerk that a sufficient number of voters have signed the supplemental initiative petition and shall submit the proposed measure, without alteration, to the voters for determination; provided, however, if any other city election is to be held within one hundred and twenty (120) days following the date of the said certificate, the city council may omit the calling of such special election and cause said question to appear on the election ballot at such approaching election for determination by the voters.

(e) *Publication:* The full text of any initiative measure which is submitted to the voters shall be published in a local newspaper not less than seven (7) nor more than fourteen (14) days preceding the date of the election at which such question is to be voted upon. Additional copies of the full text shall be available for distribution to the public in the office of the city clerk.

(f) *Form of question:* The ballots used when voting on a measure proposed by the voters under this section shall contain a question in substantially the following form:

Shall the following measure which was proposed by voters in an initiative petition take effect? (Here insert the full text of the proposed measure, or a fair, concise summary, prepared by the petitioners, and approved by the city solicitor)

— YES  
— NO

(g) *Time of taking effect:* If a majority of the votes cast on the question is in the affirmative, the measure shall be deemed to be effective forthwith, unless a later date is specified in such measure; provided, however, that no such measure shall be deemed to be adopted if fewer than twenty (20) percent of the total number of voters have voted to adopt the measure proposed under the initiative or to rescind the measure protested by the referendum.

#### Sec. 7-9. Citizen referendum procedures.

(a) *Petition, effect on final vote:* If within twenty (20) days following the date on which the city council or the school committee has voted finally to approve of any measure a petition signed by a number of voters equal to twelve (12) percent of the total number of voters as of the date of the most recent general city election and addressed to the city council, or to the school committee as may be, protesting against the measure or any part thereof is filed with the secretary of the school committee or clerk of the council, the effective date of such measure shall be temporarily suspended. The school committee or the city council shall forthwith reconsider its vote on such measure or part thereof, and if such measure is not rescinded, the city council shall provide for the submission of the question for a determination by the voters either at a special election, which it may call at its convenience, or within such time as may be requested by the school committee, or at the next regular city election, but pending such submission and determination, the effect of such measure shall continue to be suspended.



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(b) *Certain initiative provisions to apply.* The petition described in this section shall be termed a referendum petition and insofar as applicable section 7-8 (a), (b), (c) and (f) shall apply to such referendum petitions, except that the words "measure or part thereof protested against" shall be deemed to replace the word "measure" in said sections wherever it may occur and the word "referendum" shall be deemed to replace the word "initiative" wherever it may occur in said sections.

#### Sec. 7-10. Ineligible measures.

None of the following shall be subject to the initiative or the referendum procedures: (1) proceedings relating to the internal organization or operation of the city council or of the school committee, (2) an emergency measure adopted in conformity with the charter, (3) the city budget or the school committee budget as a whole, (4) revenue loan orders, (5) any appropriation for the payment of the city's debt or debt service, (6) an appropriation of funds to implement a collective bargaining agreement, (7) proceedings relating to the election, appointment, removal, discharge, employment, promotion, transfer, demotion, or other personnel action, (8) any proceedings repealing or rescinding a measure or part thereof which is protested by referendum procedures, and (9) any proceedings providing for the submission or referral to the voters at an election.

#### Sec. 7-11. Submission of other matters to voters.

The city council may of its own motion, and shall at the request of the school committee if a measure originates with that body and pertains to affairs under its jurisdiction, submit to the voters at any regular city election for adoption or rejection any measure in the same manner and with the same force and effect as are hereby provided for submission by petitions of voters.

#### Sec. 7-12. Conflicting provisions.

If two (2) or more measures passed at the same election contain conflicting provisions, only the one receiving the greatest number of affirmative votes shall take effect.

#### Sec. 7-13. Recall elections.

(a) *Application:* Any person holding an elected city office may be recalled from such office by the voters in accordance with the procedures made available in this section.

##### (b) *Recall petition.*

- (1) *Office elected by voters at large:* Four hundred (400) or more voters may file with the board of registrars of voters an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall. The signatures on such affidavit shall contain the names of at least sixty (60) voters in each of the wards into which the city is divided for the purpose of elections.
- (2) *Office elected by voters by ward:* One hundred (100) or more voters may file with the board of registrars of voters an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall. The signatures on such affidavit shall contain the names only of voters in the ward from which the officer was elected.
- (3) *At large, or by ward:* If the affidavit is found to be valid, the city clerk shall thereupon deliver to the first ten (10) persons named on said affidavit, petition blanks demanding said recall, printed forms of which shall be kept available. The blanks may be completed by printing or by typewriting; they shall be addressed to the city council; they shall contain the names and residence addresses of the ten (10) persons to whom they are issued and they shall contain the grounds for recall as stated in the affidavit; they shall demand the election of a successor to the office; and they shall be dated and signed by the city clerk.

The recall petitions shall be returned to the office of the board of registrars of voters within twenty-one (21) days following the date they are issued, signed by not less than twenty (20) percent of the total number of voters (of the ward or of the city as is appropriate) as of the date of the most recent city election.

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The sheets constituting a petition need not all be filed at the same time. For the purposes of this section such a petition shall be deemed filed whenever the persons responsible for its filing notify the board of registrars of voters, in writing, that the filing is complete. Before receiving such notice, the board of registrars of voters may, but shall not be required to, certify signatures on the sheets already filed.

The board of registrars of voters shall, within ten (10) days following the date the petition forms are filed, certify the number of signatures thereon which are the names of voters and the percentage that number represents of the total number of voters as of the date of the most recent city election,

(c) *Recall election:* If the petitions are certified by the board of registrars of voters to contain a sufficient number of signatures, they shall forthwith submit the same, with their certificate, to the city council. Upon receipt of the certified petition forms, the city council shall forthwith give written notice to the officer whose recall is sought of the validity of such petitions. If the officer whose recall is sought does not resign the office within five (5) days following delivery of the said notice, or by leaving at the last known place of residence, the city council shall order a special election to be held on a date fixed by it not less than thirty-five (35) days nor more than ninety (90) days after the date of its notice to the officer whose recall is sought.

(d) *Ballot question:* Ballots used at the recall election shall state, the proposition in substantially the following form: "Shall (insert name of officer) be recalled from the office of (insert name of office held)?"

— YES  
— NO

(e) *Officeholder:* The person whose recall is sought shall continue to hold the office and to perform the duties until the recall election. If a majority of the votes cast on the question as stated above is in the affirmative, the officer shall be deemed to be recalled and the office shall be deemed to be vacant upon the certification of the election results. If a majority of the votes cast on

the said question is in the negative, the person whose recall was sought shall continue in the office until the expiration of the term for which elected, but subject to recall as provided in section (f), below.

(f) *Restriction on recall petition:* No recall petition shall be filed against any officer until at least six (6) months following the commencement of a term of office, nor, in the case of an officer subjected to a recall election and not recalled thereby, during the remainder of the current term of office. A recall election shall not be held if less than six (6) months of the term of office of the person whose recall is sought remains at the time of the certification of the petition forms.

(g) *Filling of vacancy:* If the office of mayor is declared vacant as the result of a recall election, the city council shall forthwith call a special election to be held on a date fixed by it not less than sixty (60) nor more than ninety (90) days following the date of the recall election. The person elected at such special election shall serve for the balance of the unexpired term remaining at the time of election.

Vacancies in any other office shall be filled in accordance with the procedures for filling the same as provided in section 2-11 and section 4-1(f).

No person recalled from an office under the terms of this section shall be eligible to be a candidate to fill any vacancy created by such recall.

## ARTICLE 8. GENERAL PROVISIONS

## Sec. 8-1. Charter changes

(a) *In general:* This charter may be replaced, revised or amended in accordance with any procedure made available under the state constitution, or by statutes enacted in accordance with the state constitution.

(b) *Periodic review:* The city council shall provide, in every year ending in a zero, for a review of the charter by a special or standing committee of the council and four additional persons to be appointed by the council president. The said com-

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mittee shall file a report within the said year recommending any changes in the charter which it may deem to be necessary or desirable.

**Sec. 8-2. Severability.**

The provisions of this charter are severable. If any provision of this charter is held invalid, the other provisions shall not be affected thereby. If the application of this charter, or any of its provisions, to any person or circumstance is held invalid, the application of this charter and its provisions to other persons and circumstances shall not be affected thereby.

**Sec. 8-3. Specific provision to prevail.**

To the extent that any specific provision of this charter may conflict with any other provision expressed in general terms, the specific provision shall prevail.

**Sec. 8-4. Rules and regulations.**

A copy of all rules and regulations adopted by city agencies shall be placed on file in the office of the city clerk and shall be available for review by any person who requests such information at any reasonable time. No rule or regulation adopted by any city agency shall become effective until seven (7) days following the date it is so filed.

**Sec. 8-5. Review of ordinances.**

The city council shall provide, in each year ending in a two or in a seven, for a review of all ordinances of the city for the purpose of determining if any amendments or revisions may be necessary or desirable. Such review shall be conducted under the supervision of the city counsel, or, if the city council so directs, by special counsel appointed for that purpose. A report, with recommendations, shall be submitted within the said year.

**Sec. 8-6. Uniform procedures applicable to multiple member bodies.**

(a) *Meetings:* All multiple member bodies of the city shall meet regularly at such times and places as they may, by their own rules, prescribe, unless some other provision is made by ordinance or by

law. Special meetings of any multiple member body shall be held on the call of the chairman or by one third (1/3) of the members thereof, by written notice delivered in hand or to the place of residence of each member and which contains a list of the item or items to be acted upon. Except in case of an emergency, such notice shall be delivered at least forty-eight (48) hours in advance of the time set for such meeting. A copy of such notice to members shall, forthwith, be posted upon the city bulletin board.

(b) *Rules and journals:* Each multiple member body shall determine its own rules and order of business, unless otherwise provided by this charter, by law, or by ordinance, and shall provide for keeping minutes of its proceedings. These rules and the minutes of meetings shall be public records, and certified copies of them shall be kept available in the office of the city clerk. For the convenience of the public, copies of these records shall also be kept at the Beverly Public Library, provided, however, such copies kept at the public library are not to be construed in any way as being the official records.

(c) *Voting:* If requested by any member, any vote of any multiple member body shall be taken by a call of the roll and the vote of each member shall be recorded in the journal; provided, however, that if the vote is unanimous only that fact need be recorded.

(d) *Quorum:* A majority of the members of a multiple member body shall constitute a quorum, but a smaller number may meet and adjourn from time to time.

**Sec. 8-7. Number and gender.**

Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular, and words importing the masculine gender shall include the feminine gender.

**Sec. 8-8. Computation of time.**

In computing time under the charter, if seven (7) days or less, "days" shall refer to secular days

not including Saturdays, Sundays or legal holidays. If more than seven (7) days, every day shall be counted.

#### **Sec. 8-9. References to general laws.**

All references to General Laws contained in the charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to refer to and to include any amendments or revisions to such chapters or sections, or to the corresponding chapters and sections of any rearrangement, recodification, or revision of such statutes enacted or adopted subsequent to the adoption of this charter.

#### **Sec. 8-10. Certificate of election or appointment.**

Every person who is elected, including those elected by the city council, or appointed to an office of the city shall receive a certificate of such election or appointment from the city clerk.

Except as otherwise provided by law, before performing any act under an appointment or election, all such persons shall take and subscribe to an oath of office and be sworn to the faithful performance of their duties.

#### **Sec. 8-11. Oath of office of mayor, councillors, and school committee members.**

The mayor-elect, councillors-elect, and school committee members-elect shall, on the first Monday in January of each even-numbered year at twelve o'clock noon, meet and be sworn to the faithful discharge of their duties. The oath may be administered to the mayor by the city clerk, or by a judge of a court of record, or by a justice of the peace. The oath may be administered to the members of the city council and the school committee by the mayor, after the mayor has been duly sworn, or by any of the above named officials. A certificate that said oath or oaths have been taken shall be entered in the journal of the city council.

In case of the absence of the mayor-elect, or any member-elect of the city council or school committee on said day, the oath of office may at any time

thereafter be administered to such person who for any reasons shall not have taken the oath on the day named. A certificate of each oath subsequently taken shall be entered in the journal of the city council.

After the oath has been administered to the councillors present, they shall organize, with the member elected at large receiving the highest number of votes at the preceding biennial city election, as president, as provided in section 2-2. The president shall be sworn by the city clerk, or, in the case of the absence of the city clerk, by any person qualified to take oaths or affirmations.

After the oath has been administered to the school committee members present, the committee shall organize by choosing a school committee president, as provided in section 4-2. The president shall be sworn by the city clerk, or, in the case of the absence of the city clerk, by any person qualified to take oaths or affirmations.

#### **Sec. 8-12. Notice of vacancies.**

Whenever a vacancy shall occur in any city office or in the employment of the city, or, when by reason of a retirement, or resignation, or the expiration of a fixed term, or otherwise a vacancy can be anticipated, the mayor or other appointing authority shall forthwith cause public notice of such vacancy or impending vacancy to be publicly posted on the city bulletin board for not less than ten (10) days. Each such notice shall contain a brief description of the duties of the office or position and shall indicate a list of necessary or desirable qualifications for the office or position. Any person who desires to be considered for an appointment to fill such vacancy may, within ten (10) days following the date the notice is posted, or such longer period as may be indicated in such announcement, file with the appointing authority a statement setting forth with reasonable clarity and specificity, the qualifications of such person for such appointment. No permanent appointment to fill any position shall be effective until at least fourteen (14) days have elapsed following such posting to permit the reasonable consideration of all such applicants. This section shall not



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apply to positions covered under the civil service law and rules or if in conflict with the provisions of a collective bargaining agreement.

#### Sec. 8-13. Loss of office, excessive absence.

If any person appointed to serve as a member of a multiple member body shall fail to attend three (3) or more consecutive meetings, or all of the meetings held during four (4) calendar months, or one-half (1/2) or more of all of the meetings of such body held in one (1) calendar year, the remaining members of the multiple member body may, by a majority vote of their number, declare the office to be vacant, provided, however, that not less than ten (10) days prior to the date said vote is scheduled to be taken, the body has given in hand, or mailed, postage prepaid, by registered or certified mail, return receipt requested, notice of such proposed or pending vote to the last known address of the person whose removal is sought.

#### Sec. 8-14. Filling of vacancies.

Whenever a vacancy shall occur in the membership of an appointed multiple member body, the remaining members shall, forthwith, give written notice of such vacancy to the appointing authority. If, at the expiration of thirty (30) days following the delivery of such notice to the appointing authority, said appointing authority has not appointed some person to fill the vacancy, the remaining members of the multiple member body shall fill such vacancy for the remainder of any unexpired term by majority vote of its remaining members.

#### Sec. 8-15. Removals and suspensions.

Any employee of the city, not a city officer or a department head (hereafter "such person") and not subject to the provisions of the civil service law, or covered by the terms of a collective bargaining agreement which provides a different method; and whether appointed for a fixed or an indefinite term, may be suspended or removed from office by the appointing authority for good cause. The term "cause" shall include, but not be limited to the following: inefficiency, insubordination, conduct unbecoming the office and incapacity, other than temporary illness.

Any such person may be suspended from office by the appointing authority if such action is deemed by the appointing authority to be necessary to protect the interests of the city. However, no suspension shall be for more than fifteen (15) days. Suspension may be coterminous with removal and shall not interfere with the rights of the officer or employee under the removal procedure given below.

The appointing authority when removing any such person shall act in accordance with the following procedure:

- (a) A written notice of the intent to remove and a statement of the cause or causes therefore shall be delivered in hand or by certified mail to the last known address of the person sought to be removed.
- (b) Within five (5) days of delivery of such notice, the officer or employee of the city may request a public hearing at which such person may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing.
- (c) Between one (1) and ten (10) days after the public hearing is adjourned, or if the officer or employee of the city fails to request a public hearing, between six (6) and fifteen (15) days after delivery of the notice of intent to remove, the appointing authority shall take final action, either removing such person, or notifying such person that the notice is rescinded. Failure of the appointing authority to take any action within the time periods as stated in this section shall be deemed to be a rescission of the original notice and the officer or employee shall, forthwith, be reinstated.

Nothing in this section shall be construed as granting a right to such a hearing to a person who has been appointed for a fixed term when that term of office expires and such person is not reappointed for another term of office.

#### ARTICLE 9. TRANSITIONAL PROVISIONS.

##### Sec. 9-1. Continuation of existing laws.

All general laws, special laws, city ordinances, city council votes, and rules and regulations of or

pertaining to city that are in force when this charter takes effect, and not specifically or by implication repealed hereby, shall continue in full force and effect until amended or repealed, or rescinded by due course of law, or until they expire by their own limitation.

**Sec. 8-2. Continuation of government and administration.**

All city agencies shall continue to perform their duties until re-elected, re-appointed, or until successors to their respective positions are duly appointed or elected, or until their duties have been transferred and assumed by another city agency.

**Sec. 8-3. Transfer of records and property.**

All records, property and equipment whatsoever of any city agency, or part thereof, the powers and duties of which are assigned in whole or in part to another city agency, shall be transferred forthwith to such agency.

**Sec. 8-4. Continuation of personnel.**

Any person holding a city office, or a position in the administrative service of the city, or any person holding full time employment under the city, shall retain such office, or position, or employment, and shall continue to perform the duties of such office, position or employment until provision shall have been made for the performance of those duties by another person or agency; provided, however, no person in the permanent full time service of the city shall forfeit his or her pay grade, or time in service of the city. All such persons shall be retained in a capacity as similar to the capacity in which they were serving at the time this charter is adopted as is practicable and any reduction in the personnel needs of the city shall be accomplished through a policy of attrition, unless specific provision is otherwise made in this article.

**Sec. 8-5. Effect on obligations, taxes, etc.**

All official bonds, recognizances, obligations, contracts, and other instruments entered into or executed by or to the city before the adoption of this charter, and all taxes, assessments, fines, penalties, forfeitures, incurred or imposed, due or

owing to the city, shall be enforced and collected; and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the charter; and no legal act done by or in favor of the city shall be rendered invalid by reason of the adoption of this charter.

**Sec. 9-6. Time of taking effect.**

The provisions of this charter shall take full effect following the inauguration of the mayor and the organization of the city government on the first Monday in January in the year following the year in which the charter is adopted, except as is hereinafter provided:

- (a) The provisions of section 3-8(a) establishing the position of budget/management analyst under the city council, the provisions of sections 5-4, 5-5, 5-6, 5-7 and 5-8 providing for the establishment, consolidation and coordination of certain administrative functions, the provisions of section 6-8 providing for a five year capital improvement program to be submitted by the mayor, the provisions of section 8-4 providing for copies of administrative rules and regulations to be filed in the office of the city clerk and the provisions of section 8-10 providing for a certificate of election, or appointment, to be issued to certain city officers shall not become fully effective until the first day of July in the year following the year in which the charter is adopted.
- (b) It is the intention of the charter that the procedures for budget preparation and budget review of the annual operating budget for the city, established in article 6, shall insofar as possible be followed in the year following the year in which the charter is adopted, recognizing however that full conformity might not be possible until the second year following such adoption.
- (c) The members of the school committee who have been chosen for terms of four (4) years each shall serve for the balance of the terms for which they were elected, but, their successors shall be chosen for terms of two (2) years each. If a vacancy shall

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occur in any such office for a period longer than two (2) years, it shall be filled as though the term to be filled had been for two (2) years. When the terms of office of the two school committee members at large expire, or otherwise become vacant, such offices shall be deemed abolished and the committee structure shall thereafter be as established in section 4-1.

- (d) While the mayor elected at the election at which this charter is adopted is not expected to file a capital improvement plan with the city council in the first year of the term for which elected, the said mayor shall be responsible, forthwith, to set into motion a procedure and a process for the development of a five year capital improvement program which can be submitted in the second year of said term and thereafter updated from year to year. In order to assist the mayor in this process a special commission shall be established to consist of four (4) persons chosen by the mayor and three (3) persons chosen by the city council to assist in the development of the initial capital improvement plan. Persons appointed to such commission by the mayor, or council, may be incumbent city officers or employees or may be other voters, as may be deemed appropriate.
- (e) All persons currently serving in a city office or position by election of the city council, which office under the charter is to be filled by some other method, shall continue to serve in such office until the term for which they were chosen expires and until a successor to such office is chosen in accordance with the charter and the powers, duties and responsibilities transferred or assigned to such other person.
- (f) The authority of the mayor to make all appointments as provided in the first paragraph of section 3-3 shall take effect as the terms of office of incumbent officials expire or vacancies in city positions otherwise occur.
- (g) The authority of the mayor to remove officers or department heads appointed by the mayor

contained in section 3-4, shall not become effective until the first Monday in January in the second year following the year in which the charter is adopted and shall only apply to offices which have been appointed by the mayor pursuant to the provisions of the first paragraph of section 3-3.

- (h) The appointment making authority in the second paragraph of section 3-3 shall take effect for each department head appointed by the mayor pursuant to the authority of the first paragraph of section 3-3 upon such appointment.
- (i) The incumbent city auditor shall serve in such office until the last day of June in the year following the year in which the charter is adopted, notwithstanding the date on which the term of the incumbent would otherwise expire. The position of city auditor as it has heretofore existed and functioned shall be abolished as of the first day of July in said year. The powers of the office of auditor associated with auditing, including those described in sections fifty, fifty-one, fifty-three and fifty-four A of chapter forty-one of the General Laws, shall be retained for the position of budget/management analyst appointed by the city council. It is the intention of the charter that the day-to-day responsibilities presently performed by the auditor, such as those described in section fifty-two of said chapter forty-one, are to be transferred and assigned to a person in the department of municipal finance established by section 5-4, who shall be known as the city accountant, and who shall have the powers of a town accountant as described in sections fifty-six, fifty-seven, and fifty-eight of said chapter forty-one.
- (j) Until such time as the following may be changed by an ordinance adopted by the city council which amends, revises or repeals the same, the following shall have the force of a city ordinance.
  - (1) Salary of budget/management analyst. The annual salary of the budget/management analyst appointed by the city council pur-



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sumant to charter section 2-8(a) shall initially be established at twenty-five thousand dollars (\$25,000.00) with a proviso that the amount provided for such office shall never be less than one-half ( $\frac{1}{2}$ ) the amount provided for the office of finance director. The city council may, in lieu of expending such sum as salary, expend the said sum as a consultant account paying the certified public accountant, or firm of such accountants retained to provide the annual audit pursuant to section 6-9 from such account to provide periodic oversight services to it throughout the fiscal year.

- (2) Information to be given to newly appointed members of multiple member bodies. In order that newly appointed members of multiple member bodies might have the opportunity to become acquainted with the type and variety of matters which are likely to come before the multiple member body during the term of appointment, the chair of each multiple member body shall, forthwith upon receipt of notice of the appointment of a new member, provide such member with copies of the minutes of meetings of the body for the two (2) prior years and copies of all laws, ordinances, rules or regulations governing or otherwise applicable to the office. The chair shall, within thirty (30) days following receipt of notice of the appointment, meet with the new member and provide such orientation to the duties of the office as may be deemed necessary or desirable.

(k) Chapter 142 of the acts of 1936 and chapter 203 of the acts of 1938 placing, respectively, the office of police chief and the office of fire chief under the civil service law and rules are hereby repealed, each repeal to be effective upon the expiration of the period of service of the incumbents of the respective offices. Nothing in this revocation of acceptance of the civil service law and rules shall in any way affect any of the rights, privileges and obligations of either of said chiefs under the said civil service law and rules. The successors to said officers shall however be appointed and shall hold their office without regard to the civil service law and rules. It is the inten-

tion of the charter commission in making this provision that every mayor shall make appointments to these offices on the basis of merit and fitness alone and that the guiding principle shall always be to do that which is best for our city.

(l) Forthwith following the organization of the city government in January of the year following the year in which the charter is adopted, the mayor shall appoint seven (7) persons as a committee to review the ordinances of the city for the purpose of preparing suggested revisions to bring the ordinances into conformity with, and to fully implement the provisions of the charter. At least two (2) such persons shall have been members of the Beverly Charter Commission. The committee shall submit a report and recommendations within one year following its appointment and may submit interim reports at any time throughout the year. The committee shall give special early attention to revisions necessary to implement the organizational structure contained in article 5 of the charter.

#### Sec. 9-7. Disposition of certain special laws.

(a) *Certain special laws recognized and retained.* The following special acts are hereby specially recognized and retained:

An act passed by the legislature of the Colony of Massachusetts Bay on November 7, 1668 (old style calendar), providing, in part, That Bass River be, henceforth a township of themselves . . . and that it be called Beverly. And an act passed on May 28, 1679 (old style calendar) in which the Boundaries between Beverly, Salem and Wenham are established and clarified. And an act passed by the legislature of the Province of the Massachusetts Bay on September 13, 1753, entitled, An Act for Setting off the Inhabitants, as Also Estates of the Proprietors, of That Part of the Precinct of Salem and Beverly, So-Called, Which Is Part of Salem, to the Town of Beverly. And an act passed by the legislature of the Commonwealth of Massachusetts in 1857, Chapter 90, entitled, an Act to Set Off A Part of the Town of Beverly, and Annex the Same to the Town of Danvers.

(b) *Certain special laws recognized and retained, in part:* The following special acts which



## THE CHARTER AND RELATED LAWS

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were enacted for the purpose of enabling and authorizing the city to exercise certain powers or functions, which prior to the enactment of article eighty-nine of the amendments to the state constitution may not otherwise have been available to the city, are hereby recognized, so much of these acts which might grant a power to the city which it otherwise might not have are hereby retained, but all such powers shall be exercised in a manner consistent with the charter:

1885, Chapter 294—an Act to Furnish the Town of Beverly with Water and to Increase the Supply Thereof. 1927, Chapter 8—an Act to Authorize the City of Beverly to Establish a Trust Fund to Provide Medical Treatment for the Public School Children of Said City. 1953, Chapter 652—an Act Providing That the City of Beverly May Improve Certain Water Courses for the Protection of Public Health. 1960, Chapter 118—an Act Authorizing the Establishment of a Separate Account in the Treasury of the City of Beverly Consisting of Receipts of its Recreation Commission and Providing for Expenditures Therefrom Without Further Appropriation. 1968, Chapter 313—an Act Authorizing the City of Beverly to Revoke its Acceptance of the Law Applicable to Tenement Houses in Cities. 1969, Chapter 308—an Act Authorizing the Establishment of a Separate Account in the Treasury of the City of Beverly Consisting of Receipts of its Youth Activities Commission and Providing for Expenditures Therefrom Without Further Appropriation. 1974, Chapter 735—an Act Authorizing the City of Beverly to Enter into a Certain Contract with Gordon College for Sewage Disposal. 1983 Chapter 250—an Act Relative to the Licensing and Keeping of Dogs in the City of Beverly. 1986, Chapter 966—an Act Further Authorizing the City of Beverly to Enter into a Certain Contract with Gordon College for Sewage Disposal. 1994, Chapter 90—an Act Authorizing the City of Beverly to Amortize the Revenue Deficit over a Period of Three Years. 1994, Chapter 228—an Act Authorizing the City of Beverly to enter into a contract for the disposal of sewage.

(c) *Certain obsolete borrowing authorizations, repealed:* The following special acts which autho-

rized the city to borrow certain sums of money, for certain purposes, are hereby recognized as obsolete and are to stand repealed:

1874, Chapter 168—an Act to Authorize the Town of Beverly to Issue Bonds for the Purpose of Funding its Debt. 1881, Chapter 231—an Act to Authorize the Town of Beverly to Refund its Indebtedness. 1893, Chapter 250—an Act to Authorize the Town of Beverly to Incur Indebtedness Beyond the Limit Fixed by Law, for the Purpose of Constructing a System of Sewerage. 1893, Chapter 259—an Act to Authorize the Town of Beverly to Cancel Certain of its Bonds Now Held in its Sinking Fund. 1894, Chapter 29—an Act to Authorize the Town of Beverly to Issue Bonds for the Purpose of Funding its Water Loan. 1896, Chapter 271—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond the Limit Fixed by Law, for Park Purposes. 1898, Chapter 398—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond its Debt Limit, for School Purposes. 1900, Chapter 288—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond the Limit Fixed by Law, for the Purpose of Constructing a System of Sewerage. 1901, Chapter 475—an Act to Authorize the City of Beverly to Incur Indebtedness for School Purposes. 1902, Chapter 431—an Act to Authorize the City of Beverly to Incur Indebtedness for School Purposes. 1903, Chapter 182—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond the Limit Fixed by Law, for the Purpose of Extending its System of Sewerage. 1903, Chapter 183—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond the Limit Fixed by Law, for the Purpose of Extending its Water Supply System. 1903, Chapter 263—an Act to Authorize the City of Beverly to Incur Indebtedness for School and Street Purposes. 1905, Chapter 192—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond its Debt Limit, for Water Supply Purposes. 1906, Chapter 148—an Act to Authorize the City of Beverly to Incur Indebtedness Beyond its Debt Limit, for School Purposes. 1906, Chapter 110—an Act to Authorize the City of Beverly to Incur Indebtedness for Sewerage Purposes, Beyond the Statutory Limit. 1906, Chapter 388—an Act to Determine the Indebtedness of the City of

## BEVERLY REVISED ORDINANCES

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Beverly Incurred for Water Supply Purpose. 1913, Chapter 298—an Act Relative to Sewer Loans of the City of Beverly. 1914, Chapter 321—an Act to Authorize the City of Beverly to Incur Indebtedness for the Improvement of its Harbor and Shores. 1914, Chapter 768—an Act to Authorize the City of Beverly To Incur Indebtedness for the Purpose of Relaying Certain Water Mains. 1915, Chapter 266—an Act to Authorize the City of Beverly to Incur Indebtedness for the Purpose of Relaying Certain Water Mains. 1921, Chapter 453—an Act Authorizing the City of Beverly to Incur Indebtedness for a High School Building. 1949, Chapter 500—an Act Authorizing the City of Beverly to Borrow Money for Fire Station and Signal Station Building Purposes. 1949, Chapter 120—an act authorizing the City of Beverly to borrow money for school purposes. 1950, Chapter 642—an Act Authorizing the City of Beverly to Borrow Money for School Purposes.

(d) *Certain other obsolete special laws repealed:*  
The following special laws which were enacted for special purposes and were limited in time by their own provisions are hereby recognized as obsolete and are to stand repealed, but all acts taken under the authority of the said special laws are hereby preserved:

1910, Chapter 505—an Act to Confirm Certain Proceedings of the City Council of the City of Beverly. 1912, Chapter 544—an Act to Authorize the City of Beverly to Discontinue the Use for Playground Purposes of a Certain Parcel of Land near the Poor Farm in That City. 1914, Chapter 650—an Act to Authorize the City of Beverly to Pension George O. O'bear. 1920, Chapter 275—an Act to Authorize the City of Beverly to Contribute a Sum of Money to the Federal Government to Be Used in the Improvement of Beverly Harbor. 1922, Chapter 87—an Act Authorizing the City of Beverly to Pay a Sum of Money to the Estate of Patrick Gallagher for Taxes Erroneously Assessed and Collected. 1922, Chapter 155—an Act Authorizing the City of Beverly to Pay a Sum of Money to the Widow of James J. Fagan. 1923, Chapter 356—an Act Authorizing the City of Beverly to Pension Walter Farnham. 1924, Chapter 125—an Act Authorizing the City of Beverly to Pension

Nathaniel W. Carlisa. 1924, Chapter 333—an Act Authorizing the City of Beverly to Pay a Sum of Money to the Widow of James J. Fagan. 1925, Chapter 276—an Act Authorizing the City of Beverly to Appropriate Money to Provide Facilities for Holding in Said City During the Current Year the State Convention of the Veterans of Foreign Wars of the United States. 1938, Chapter 375—an Act to Authorize the City of Beverly to Refund Certain Taxes Erroneously Assessed upon and Collected from Alonzo B. Morse. 1941, Chapter 469—an Act Authorizing the City of Beverly to Take by Eminent Domain for Public Airport Purposes Certain Property in the Town of Danvers. 1943, Chapter 429—an Act Relating to the Acquisition of Certain Property by the City of Beverly for a Public Park. 1946, Chapter 118—an Act Relative to the Number of Members of the Reserve Police Force in the City of Beverly. 1951, Chapter 187—an Act Authorizing the City of Beverly to Pay a Certain Claim Legally Unenforceable by Reason of Failure to Comply with Certain Provisions of its City Charter. 1959, Chapter 162—an Act Authorizing the Granting of a License For the Sale of Alcoholic Beverages to Vittori Rocci Post # 56 of the Italian-American War Veterans. 1959, Chapter 204—an Act Authorizing the City of Beverly to Pay Sums of Money to William Devitt, Alice P. Huson, Bayard D. Huson, Lawrence Lapointe, Marie and Anthony Vaccaro and Clifford M. And Henrietta C. Caverly. 1959, Chapter 434—an Act Authorizing the City of Beverly to Pay a Certain Unpaid Bill to Merrimack Essex Electric Company. 1962, Chapter 118—an Act Providing Life Tenure for Gordon T. Richardson, Incumbent of the Office of Commissioner of Public Works of the City of Beverly. 1963, Chapter 189—an Act Authorizing the City of Beverly to Acquire Land and to Construct—an Off-Street Parking Area and to Borrow Money for the Construction Thereof. 1965, Chapter 588—an Act Providing for Life Tenure for Walter T. Barnes, Incumbent of the Office of City Collector of the City of Beverly. 1966, Chapter 568—an Act Authorizing the City of Beverly to Appropriate Money for the Payment of, and to Pay, Certain Unpaid Bills. 1967, Chapter 146—an Act Authorizing the City of Beverly to Pay a Certain Unpaid Bill to Sid's

## THE CHARTER AND RELATED LAWS

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Donuts, Inc. 1968, Chapter 571—an Act Validating a Certain Building Permit Issued by the City of Beverly. 1970, Chapter 624—an Act Authorizing the City of Beverly to appropriate Money for the Payment of, and to Pay, a Certain Unpaid Bill. 1970, Chapter 661—an Act Authorizing the City of Beverly to appropriate Money for the Payment of and to Pay a Certain Unpaid Bill. 1973, Chapter 196—an Act Authorizing the City of Beverly to appropriate and Pay a Sum of Money to Michael J. Frasca. 1973, Chapter 1139—an Act Authorizing the City of Beverly to Convey Certain Land in the City of Beverly. 1974, Chapter 64—an Act Authorizing the City of Beverly to Convey Certain Land in the City of Beverly. 1975, Chapter 423—an Act Authorizing the City of Beverly to Redraw its Ward Lines. 1983, Chapter 493—an Act Authorizing the City of Beverly to Acquire Easements for the Construction of Certain Sewerage Facilities. 1986, Chapter 533—an Act Authorizing the Acquisition of Land in the Town of Wenham by the City of Beverly. 1989, Chapter 136—an Act Authorizing the City of Beverly to Pay Certain Retroactive Compensation.

(e) *Certain Other Obsolete Special Laws Repealed:* The following special laws which established and amended the charter for the city of Beverly are hereby recognized as obsolete and are to stand repealed, but all acts taken under the authority of the said special laws are hereby preserved:

1894, Chapter 161—an Act to Incorporate the City of Beverly. 1898, Chapter 319—an Act Relative to Streets and Highways in the City of Beverly. 1910, Chapter 342—an Act to Revise the Charter of the City of Beverly. 1911, Chapter 267—an Act Relative to Wires and Electric Appliances in the City of Beverly. 1913, Chapter 398—an Act Relative to Printing Proposals for Contracts with the City of Beverly. 1913, Chapter 209—an Act to Authorize the School Committee of the City of Beverly to Appoint the School Physicians for That City. 1915, Chapter 72—an Act to Authorize the City of Beverly to Pay Permanent Men in the Fire Department Three Dollars a Day. 1915, Chapter 141—an Act to Authorize the City of Beverly to Pay Salaries to the Members of its Board of Alder-

men. 1919, Chapter 75—an Act Relative to the Payment of Salaries in the Police and Fire Departments of the City of Beverly. 1920, Chapter 26—an Act Relative to the Salaries of the Mayor and Other Public Officers of the City of Beverly. 1921, Chapter 9—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1922, Chapter 140—an Act Providing for a Preliminary Election for the Choice of Municipal Officers in the City of Beverly. 1927, Chapter 279—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1934, Chapter 159—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1936, Chapter 29—an Act Establishing Biennial Municipal Elections in the City of Beverly and Making Certain Other Charter Changes. 1936, Chapter 46—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1939, Chapter 135—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1941, Chapter 223—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1943, Chapter 112—an Act Providing for the Holding of Biennial Municipal Elections in the City of Beverly in Odd-Numbered Years and Establishing the Date of Said Elections. 1943, Chapter 198—an Act Authorizing the City of Beverly to Compensate the Members of its Board of Aldermen. 1945, Chapter 144—an Act Relative to the Polling Hours at Elections in the City of Beverly. 1947, Chapter 162—an Act Authorizing the City of Beverly to Increase the Compensation of the Members of its Board of Aldermen. 1951, Chapter 238—an Act Providing for the Holding of Biennial Municipal Elections in the City of Beverly in Odd-Numbered Years and Establishing the Date of Said Elections. 1952, Chapter 236—an Act Creating a Development and Industrial Commission in the City of Beverly. 1952, Chapter 336—an Act Authorizing the City of Beverly to Increase the Compensation of the Members of its Board of Aldermen. 1953, Chapter 95—an Act Relative to Additions to or Alterations of Certain Buildings in the City of Beverly. 1954, Chapter 603—an Act Relative to the Election of Certain Officials in the City of

# Exhibit 4



## PART II THE REVISED ORDINANCES

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The Director of Community Services shall have the following specific powers and duties:

- a) Provide coordination and direction to the agencies within the department to insure consistent administration and the efficient delivery of services to citizens and taxpayers.
- b) Meet regularly with the Mayor to develop goals and objectives for each of the agencies within the department and to measure and evaluate the performance of functions by the agencies.
- c) Meet with the multiple member bodies which are responsible for the oversight of the agencies' programs to explain the goals and objectives set by the Mayor for each such agency.
- d) Examine the level of services provided in other communities to ensure the City of Beverly provides nothing less than an equivalent service for its citizens.
- e) Assist constituent agencies in the development of annual operating budgets and capital outlay requests.
- f) Provide assistance to the constituent multiple member bodies in personnel-related matters including appointment, discharge, evaluation and supervision.
- g) Serve as liaison between the multiple member bodies, the divisions, the City Council and the Mayor.
- h) Be responsible for the coordination and supervision of the data processing and management information systems for the city and any of its governmental offices and agencies.

**SECTION 3-313. Confidential Secretary/Administrative Assistant to the Mayor**

**(a). Establishment.** – There shall be a Confidential Secretary/Administrative Assistant to the Mayor.

**(b) Mode of Appointment, Term of Office** - The Confidential Secretary/Administrative Assistant to the Mayor shall be appointed by and responsible only to the Mayor. The Confidential Secretary/Administrative Assistant shall serve at the pleasure of the Mayor.

**(c) Authorities and Responsibilities** - The Confidential Secretary/Administrative Assistant to the Mayor shall have the following duties:

- (1) Organize and summarize information and prepare it for the Mayor's review and action;
- (2) Meet with department heads regarding day-to-day business, expediting administrative interaction between the Mayor's office and City departments;

- (3) Serve as a liaison officer between the Mayor, the media, public interest groups, businesses and residents;
- (4) Be familiar with all aspects of the City government and with the functions and activities of the various offices and employees of the City;
- (5) Be familiar with the various services rendered by the City to its residents, in order that callers can be informed of the extent of these services and of the schedule for their performance;
- (6) Review all correspondence received in the office of the Mayor, and arrange for its routing and for assembling the materials needed by the Mayor to respond to all such correspondence;
- (7) Answer all telephone calls placed to the office, respond in an appropriate fashion and direct as appropriate;

#### **SECTION 3-314. Constables**

**(a) Establishment** - There shall be one or more constables as provided in MGL Chapter 41, Sections 91 through 95.

**(b) Mode of Appointment, Term of Office** - The Mayor shall appoint, subject to the review of the City Council as provided in Section 2-10 of the Beverly Home Rule Charter, one or more constables for a term not to exceed three years each.

**(c) Authorities and Responsibilities** - Constables may serve certain civil writs and processes. They have the powers of sheriffs to require aid in the execution of their duties. Constables take due notice of and prosecute all violations of law, respecting the observance of the Lord's Day, profane swearing and gaming. Constables also serve all processes directed to them by the City, for notification of City meetings, or for other purposes.

#### **SECTION 3-315. Dog Officer (Animal Control Officer)**

**(a) Establishment** -- There shall be a Dog Officer as provided in MGL Chapter 140, Section 151 *et seq.*

**(b) Mode of Appointment, Term of Office** - The Mayor shall annually, subject to the review of the City Council as provided in Section 2-10 of the Beverly Home Rule Charter, appoint a Dog Officer and one or more assistants, for a term not to exceed three years. The person appointed to such office shall be known as the Animal Control Officer. (Ord. No. 428, § 1, 10-19-87)

**(c) Authorities and Responsibilities** - The Dog Officer/Animal Control Officer shall be responsible for the enforcement of all laws relating to the care, custody and control of dogs in the

# Exhibit 5



William F. Scanlon, Jr.  
5 Whitman Place  
Beverly, MA 01915

978-922-9699

December 17, 2003

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

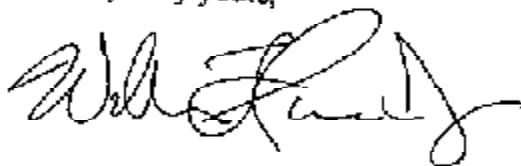
Ms. Crystal Atherton  
61 Conant Street  
Beverly, MA 01915

Dear Crystal:

As you most probably are aware, the City Charter of the City of Beverly grants to the Mayor the power to remove from office all persons appointed by the Mayor. On January 5, 2004 it is my intention to remove you from your present position. Before that should become necessary, I offer you this opportunity to resign your position, with such resignation to be effective no later than 12:00 Noon, Monday, January 5, 2004. If you wish to take advantage of this opportunity I request that you file your resignation with the City Clerk by the close of business Wednesday, December 31, 2003.

Should you choose to resign, please know that in so acting you are serving the citizens of Beverly by facilitating and contributing to a smooth transition of government from the present administration to the next and for that you have my thanks.

Very truly yours,



# Exhibit 6

December 31, 2003

William F. Scanlon, Jr.  
Mayor Elect  
5 Whitman Place  
Beverly, MA 01915

Dear Mayor Elect Scanlon:

I have received your letter dated December 17, 2003 seeking my resignation. As I told you in our telephone conversation, I do not intend to resign and do not believe I am subject to removal under the City Charter (see Section 8-15), except possibly for cause. As I also told you in our conversation, I do not have a position to resign from because I am not a city officer or a department head but rather a rank and file staff secretary—a career public servant who has served a number of administrations, including your earlier administration.

As a dedicated public servant with more than 18 years of service and an exemplary employment record, I do not think that "for cause" termination is an issue.

I have decided to take three weeks of vacation and will return to work on January 20, 2004. Having dedicated more than 18 years to the City as a loyal employee and public servant, I look forward to continuing my work for the City of Beverly and its residents.

If you wish to re-assign me to a different department or location, please let me know.

Sincerely,

Crystal A. Atherton  
61 Conant Street  
Beverly, MA 01915  
(978) 927-2943

# Exhibit 7



*Office of the Mayor  
City of Beverly  
Massachusetts 01915*

Mayor  
William F. Scanlon, Jr.

Executive Secretary  
Linda Paluzzi Giallongo

Telephone  
(978) 921-6000

Facsimile  
(978) 922-0285

January 5, 2004

Mrs. Frances Macdonald  
Beverly City Clerk  
City Hall  
191 Cabot Street  
Beverly, MA 01915

Re: Removal of Crystal Atherton from the position as the Mayor's Confidential Secretary and Clerk to the Beverly License Board

Dear Mrs. Macdonald:

In accordance with Section 3-3 and Section 3-4 of the Beverly Home Rule Charter and Section 3-313 of the Administrative Code, I do hereby remove Crystal Atherton from the position of Mayor's Confidential Secretary. Further in accordance with Section 3-3 and Section 3-4 of the Beverly Home Rule Charter, I do hereby remove Crystal Atherton from the position of Clerk to the Beverly License Board.

The specific reason for this action is that I desire to fill these positions with a person of my own choosing and in whom I have faith and confidence will perform the duties of such positions in an exemplary fashion.

This removal is effective immediately.

Very truly yours,

William F. Scanlon, Jr.  
Mayor of Beverly

WFS/lpg

Cc: Crystal Atherton by Certified Mail, Postage Prepaid

# Exhibit 8



January 12, 2004

William F. Scanlon, Jr., Mayor  
City of Beverly  
191 Cabot Street  
Beverly, MA 01915

Dear Mayor Scanlon:

I am in receipt of a copy of your letter dated January 5, 2004, in which you advised the City Clerk that you have removed me in accordance with Section 3-3 and 3-4 of the Beverly Home Rule Charter from the positions I have recently held in the City of Beverly.

Pursuant to Section 8-15 of the Beverly Home Rule Charter, I hereby request a public hearing and a hearing as otherwise allowed or required by law.

Very truly yours,

Crystal A. Atherton  
61 Conant Street  
Beverly, MA 01915

# Exhibit 9

COMMONWEALTH OF MASSACHUSETTS  
DISTRICT OF MASSACHUSETTS

CASE NO. 05-11323-MW  
CRYSTAL AHERTON,  
Plaintiff

vs.  
CITY OF REVERLY, et al.,  
Defendant

DEPOSITION OF LINDA P. GIALONGO, a  
Witness called on behalf of the Plaintiff,  
pursuant to the Massachusetts Rules of Civil  
Procedure, before Kelly G. Patterson, a  
Notary Public in and for the Commonwealth of  
Massachusetts, at the law offices of  
Shapiro & Hender, 640 Main Street, Malden,  
Massachusetts, on Tuesday, November 6, 2007,  
commencing at 1:00 p.m.

RONALD W. DAY COURT REPORTING

**APPEARANCES:**

**SHAPIRO & HENDER**

(by Eric L. Schwartz, Esquire)

(by Jordan Shapiro, Esquire)

640 Main Street

Malden, Massachusetts 02148

Tel. (781) 324-5200

for the Plaintiff;

**KOPELMAN & PAIGE**

(by Elizabeth Corbo, Esquire)

101 Arch Street

Boston, Massachusetts 02110

for the Defendant.

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2 Newspaper article entitled "Mayor hires Atherton as new executive secretary."	18
3 Newspaper article entitled "Ex-secretary sues for discrimination."	19
4 Proposed City Organization Chart.	20
5 Section 3-313.	29
6 Letter dated January 5, 2004.	33
7 Letter dated January 12, 2004.	34
8 Complete Section 3-313.	40

**STIPULATIONS**

IT IS HEREBY STIPULATED AND AGREED by  
and between counsel for the respective  
parties that the Witness will read and sign  
the deposition transcript under the pains  
and penalties of perjury; and that the  
reading and signing is deemed waived if not  
accomplished within 30 days of transcript  
delivery.

It is further stipulated and agreed  
that all objections, except as to the form  
of the questions, and motions to strike will  
be reserved until the time of trial or  
pretrial hearing.

\* \* \* \* \*

**LINDA P. GIALONGO, a witness**  
called for examination by counsel for the  
Plaintiff, having been satisfactorily  
identified by the production of her/his  
driver's license, being first sworn by the  
Notary Public, was examined and testified as  
follows:

**DIRECT EXAMINATION**

(By Mr. Schwartz)

1 Q. Hi, Ms. Giallongo. Am I pronouncing your  
 2 name correctly?  
 3 A. **That's correct.**  
 4 Q. My name is Eric Shwartz. I'm going to ask  
 5 you a number of questions, and I'm going to  
 6 ask you for your verbal response, so if you  
 7 could please not give "Uh-huh" and "Huh-uh"  
 8 type responses, that would be easier for the  
 9 stenographer. Another thing that will make  
 10 it easier for the stenographer will be for  
 11 me to ask the question, finish the question,  
 12 give you an opportunity to answer, and I'll  
 13 try not to interrupt you, and hopefully we  
 14 won't talk over each other, because then it  
 15 makes it very difficult for the  
 16 stenographer.  
 17 A. **Okay.**  
 18 Q. If for any reason you don't understand a  
 19 question, please tell me and I'll repeat it  
 20 or rephrase it. If you do not ask me to  
 21 repeat or rephrase the question, I will  
 22 assume that you understood the question.  
 23 Are we in agreement?  
 24 A. **Yes.**

7

1 Q. Where did you work after you received your  
 2 associate's degree?  
 3 A. **I worked for the City of Beverly since 1967**  
 4 **until 2002.**  
 5 Q. In what capacity did you work in '67?  
 6 A. **I worked as the secretary to the principal**  
 7 **at the Memorial Junior High School at 502**  
 8 **Cabot Street in Beverly. I worked there**  
 9 **until, I think it was, 1978 that I became a**  
 10 **senior bookkeeper at the administration**  
 11 **office at the superintendent where I did**  
 12 **payroll until I went to work at City Hall in**  
 13 **1980.**  
 14 Q. What did you do in 1980 for the City?  
 15 A. **I became the mayor's secretary.**  
 16 Q. How many mayor's have you worked under?  
 17 A. **Four.**  
 18 Q. Their names are, and can you give me their  
 19 terms, as well, to the best of your  
 20 knowledge?  
 21 A. **I came in the middle of a term when I first**  
 22 **began. It was Peter Fortunato, and that was**  
 23 **in June of 1980, and I worked for him**  
 24 **through that term and another term.**

1 Q. Your full name, please?  
 2 A. **Linda Giallongo.**  
 3 Q. Your age?  
 4 A. **Fifty-eight.**  
 5 Q. Your address?  
 6 A. **18 Somerset Avenue in Beverly,**  
 7 **Massachusetts, 01915.**  
 8 Q. Your occupation?  
 9 A. **Executive secretary for the mayor for the**  
 10 **City of Beverly.**  
 11 Q. What is your education?  
 12 A. **I have an associate's degree from North**  
 13 **Shore Community College, in legal**  
 14 **secretarial, I guess is what it was, and I**  
 15 **have some business courses at Salem State**  
 16 **College.**  
 17 Q. What year did you get your associate's  
 18 degree?  
 19 A. **1970, I believe.**  
 20 Q. Have you taken any other courses, other than  
 21 the things you just mentioned?  
 22 A. **Similar type things, but no courses, no.**  
 23 Q. You don't have any certificates, otherwise?  
 24 A. **No.**

8

1 Q. Would it be 1986?  
 2 A. **No, it was two-year terms, so it would have**  
 3 **been '82 to '83, and then '84, it would have**  
 4 **been John Monahan, and I worked for him**  
 5 **until 1993, at which time Mayor Scanlon came**  
 6 **in office in '94, and I worked for him until**  
 7 **2001, and then I worked for Thomas Crean**  
 8 **from January 2002 until about October 2002,**  
 9 **and then I went back to work for William**  
 10 **Scanlon in 2004. I think that's about**  
 11 **right. I'm not exactly sure about the**  
 12 **dates, but I think that's what it was.**  
 13 Q. When you left during the term of Mayor  
 14 Crean?  
 15 A. **Yes.**  
 16 Q. Did you formally retire from the City?  
 17 A. **I did.**  
 18 Q. You submitted formal retirement papers to  
 19 the retirement board?  
 20 A. **I did.**  
 21 Q. What did you do for work during that time  
 22 after you retired from the City? Did you  
 23 work any other positions?  
 24 A. **I worked as the secretary to the director**

**for the Amesbury Alliance.**

Q. What is the Amesbury Alliance?

A. **It's similar to a Chamber of Commerce, little bit of differences. They were funded partially by the City of Amesbury.**

Q. What did you do to come back with the City in terms of your retirement?

A. **When I came back to work under Mayor Scanlon in 2004, I repaid the money that I had received in retirement.**

Q. Have you ever been deposed before?

A. **Yes.**

Q. When?

A. **It was three or four years ago. It was a case that my son was involved with an automobile accident. He was hit by a car.**

Q. Have you ever been deposed in any other situations?

A. **No.**

Q. Just to go back a question or two. What did you do to prepare for today's deposition?

A. **I gave a thought about what I thought you might ask me. I prepared a general list of duties. That was it.**

Q. Duties of?

A. **What my current duties are.**

Q. Did you review any documents?

A. **No.**

Q. Did you speak to Mayor Scanlon about this deposition?

A. **I did not.**

Q. He didn't speak to you about it either? I just want to clarify that.

A. **No, he did not, except that I told him I was coming today, but I didn't discuss it at all.**

Q. Just to tell him you weren't going to be in so someone could fill in for you, fair to say?

A. **Uh-huh.**

Q. Have you ever been involved as a party in another lawsuit?

A. **Well, when I left the City of Beverly, I did file a lawsuit, but shortly thereafter, I dropped it. I didn't want to go forward with it, so I never really went to court or anything like that.**

Q. When was that filed?

11

A. **It probably was the early part of November of 2002. The latter part of October. I'm not exactly sure.**

(Document entitled "Employee's Complaint of Unlawful Practices" marked Exhibit No. 1 for Identification.)

A. **And the other would have been when my son was hit by the car was the other.**

MS. CORBO: Off the record.

(Discussion off the record.)

Q. Just to go back to what you just said, how old was your son when he was involved in the accident?

A. **I think he was in the seventh grade.**

Q. So he was a minor?

A. **That's correct.**

Q. Just wanted to clarify that. Have you seen this document before, Ms. Giallongo?

A. **Yes, I have.**

Q. How did you?

A. **I think my attorney showed it. I think I did.**

Q. Who represented you in this matter?

A. **Marshall Handly.**

12

Q. Was he former city solicitor for Beverly?

A. **He was.**

Q. Have you read this document before?

A. **To be honest with you, I can't remember. Yes, I did read this.**

Q. Fair to say on the next to last page that is your signature?

A. **Yes, that is my signature.**

Q. Now, you said previously that you filed the suit and dropped it soon thereafter?

A. **Yeah.**

Q. Do you know when, approximately, it was dropped?

A. **I don't.**

Q. Can you tell me why it was dismissed?

A. **I just decided that -- well, I didn't think at the time that I should have filed with the Commission Against Discrimination, because I didn't feel discrimination, and I got a job shortly after I left the city, so I felt it was better for myself and my family just to move on.**

Q. On the first page, you claim that there were "Statements in connection with employment,

1 which expresses, directly or indirectly,  
2 limitation, specification or discrimination  
3 as to the age of municipal employees  
4 unrelated to any bona fide occupational  
5 qualification." It's on the bottom of the  
6 first page. Can you tell me what is meant  
7 by that, if you know?

8 A. **I guess it means that I was being  
9 discriminated against because of my age.**

10 Q. On the second page, there's a section titled  
11 "Factual Allegations". Just to be clear,  
12 above your signature, let me go back a  
13 question, you verified and attested that the  
14 statements in this document were true on  
15 October 18, 2002, correct?

16 A. **Yes.**

17 Q. In the "Factual Allegations," you claim that  
18 Section 815 of the city Charter provides  
19 you, in Paragraph 4, provide you a specific  
20 process for employee discipline. Is that  
21 correct, that you invoked that section?

22 A. **Yes.**

23 Q. It was your belief at the time that Section  
24 815 applied to you as secretary to the

1 mayor?

2 A. **That's correct.**

3 Q. And then in Paragraph 5, you claim that,  
4 Section 5-3, "that employment by the city is  
5 governed by a 'merit principle'." That's a  
6 fair statement that this document reflects  
7 that?

8 A. **Yes.**

9 Q. This merit principle applies to you as  
10 secretary to the mayor?

11 A. **Yes.**

12 Q. And then in Paragraph 6, at the end, that  
13 there's a general, without going through the  
14 full, there's a general policy of attrition,  
15 is that a fair statement, in terms of hiring  
16 or letting people go, it should be done  
17 naturally through a normal attrition, as  
18 opposed to layoffs, that that's the stated  
19 policy of the City?

20 A. **Yes.**

21 Q. And then in Paragraph 8 you state that it  
22 was your belief that your employment is  
23 protected except through attrition, correct?

24 A. **That's correct.**

15  
1 Q. Do you still believe, as we sit here today,  
2 that that is the case?

3 A. **No.**

4 Q. Why has your view changed?

5 A. **Because my attorney and I had a discussion,  
6 and he said --**

7 Q. Well, I don't want you to waive your  
8 attorney/client privilege.

9 MS. CORBO: Go off the record for a  
10 second.

11 (Discussion off the record.)

12 (Recess.)

13 Q. Let me try to rephrase the question, maybe  
14 that will assist in moving this along to  
15 some degree. Previously, I asked you if  
16 your opinion had changed as to some of the  
17 things that I read you from this document,  
18 correct?

19 A. **Correct.**

20 Q. And you said that it had. Without knowing  
21 the basis as to why your opinion had  
22 changed, can you tell me what your opinion  
23 is today?

24 MS. CORBO: Go ahead and answer the

16  
1 question. Do not get into any conversations  
2 that you had. He's just asking you what  
3 your opinion is today as to.

4 MR. SHWARTZ: As to whether or not the  
5 employment as secretary is protected by the  
6 Charter, I guess, generally.

7 A. **I do not believe that the position is  
8 protected by the Charter, after I had  
9 conversation with my attorney.**

10 Q. Do you have any specific reason as to why  
11 your opinion changed?

12 MS. CORBO: Objection to the extent that  
13 your reason is based upon conversations with  
14 your attorney that would be privileged.

15 Q. How has your belief changed, other than the  
16 fact that you believe that it's not  
17 protected? What is your basis for those  
18 beliefs, I guess is my question?

19 MS. CORBO: Same objection. Sometimes  
20 I'm going to object, and you can answer. If  
21 you have any basis for belief that is not as  
22 a result of your discussions with your  
23 counsel, you can state that. Anything  
24 independent of your discussions with your



counsel.

A. **Well, when I first started working for the City in 1980, I knew at that time that my position was at the discretion of the mayor. When I left the school department, I took a leave of absence from my position and I went to work for the mayor. I guess probably into my second term, I decided that it wasn't fair to the person that was taking my position at the school department, and so I resigned my position at the school department, knowing, going forward, that my job hinged upon whether or not the mayor wanted to keep me. Somewhere in between there, when the Charter changed, I thought that there were things written -- there was a portion of the Charter that protected us, but after my discussion with my attorney, I realized that that wasn't the case.**

Q. You said that your case against the city you filed at the Mass. Commission Against Discrimination was dismissed?

A. **We withdrew it, I believe.**

Q. There was no settlement with the city?

19

A. **Yes.**

Q. Is that a fair representation of what you told the reporter?

A. **Yes.**

Q. I presume that you believed that to be the case at the time?

A. **That's true.**

Q. As we sit here today, you still believe that your termination was due to political reasons?

A. **I do.**

(Newspaper article entitled "Ex-secretary sues for discrimination marked Exhibit No. 3 for Identification.")

Q. Ms. Giallongo, have you seen this article before?

A. **I've seen it, but I don't believe I read it at the time.**

Q. This article, there's an assertion that you were fired for political reasons. Do you remember speaking to the reporter at or around this time, May 4, 2005, Chas Sisk?

A. **I don't remember.**

Q. In the paragraph above where it says

A. **No.**

Q. You stated earlier that you had worked for Mayor Crean for a period of time?

A. **Yes.**

Q. How long did you work for him before you left the City?

A. **From the first Monday in January, and I think my retirement date was October 4.**

MS. CORBO: If you can let Attorney Schwartz finish his question, even if you think you know what he's going to ask.

Q. Did you ever have a hearing at the MCAD, in terms of going there?

A. **No.**

Q. I'm going to have some newspaper articles marked.

(Newspaper article entitled "Mayor hires Atherton as new executive secretary" marked Exhibit No. 2 for Identification.)

Q. Have you seen this newspaper article before?

A. **Yes.**

Q. In the third paragraph, there's a statement attributed to you that claims that your termination was political?

20

"trading places", the preceding paragraph, there's one sentence there, it says, "Giallongo eventually dropped her complaint when Scanlon again took the mayor's office and she resumed her post as mayor's secretary." That's not a fair characterization, because you didn't drop the suit as soon as when -- previously, right?

A. **No. Uh-huh.**

Q. Yes?

A. **I believe that I dropped it before that.**

Q. Okay. I'd like to have this marked.

(Proposed City Organization Chart marked Exhibit No. 4 for Identification.)

(Discussion off the record.)

Q. Ms. Giallongo, I'm showing a document entitled "Proposed City Organizational Chart." Have you seen this before?

A. **I have.**

Q. Connected to the mayor there are two jobs, or two positions, is that a fair statement? One is executive secretary to mayor, and then the other is chief administrative aide?

1 A. **There are two listed here, yes.**  
 2 Q. Are there -- Is there a chief administrative  
 3 aide in the City of Beverly for the mayor?  
 4 A. **Not at this time.**  
 5 Q. Has previously, mayors that you've worked  
 6 for, have they had administrative aides, the  
 7 previous mayors?  
 8 A. **Yes, not always, but at certain times, yes,**  
 9 **and when Mr. Crean was in office, his person**  
 10 **was called the chief of staff.**  
 11 Q. The present office today, as we speak?  
 12 A. **There is no administrative aide or chief of**  
 13 **staff. It's only Mayor Scanlon and myself.**  
 14 Q. Are there any other employees that work out  
 15 of the office?  
 16 A. **No.**  
 17 Q. What role did the chief of staff or previous  
 18 chief administrative aides perform?  
 19 A. **Well, in each situation I guess they were a**  
 20 **little different. Sometimes they went to**  
 21 **meetings for the mayor, sometimes they**  
 22 **represented the mayor at functions. It's**  
 23 **hard for me to know because I wasn't doing**  
 24 **that job, but they had different duties than**

23

1 what policies should be with respect to day  
 2 to day operation of the city?  
 3 A. **I don't understand what you mean by**  
 4 **"policies".**  
 5 Q. In terms of anything that occurs outside of  
 6 the office that you work in physically, do  
 7 you advise the mayor to take a particular  
 8 stance on issues affecting the city?  
 9 A. **No.**  
 10 Q. Do you participate in meetings with respect  
 11 to the mayor and the formulation of policy,  
 12 outside of the office? I'm not talking  
 13 about filing internally within the office,  
 14 I'm talking about in his capacity as mayor.  
 15 A. **When you say "outside of the office," I**  
 16 **don't understand.**  
 17 Q. I mean physically, you're not making a  
 18 determination as to how something should be  
 19 physically filed in the office. I'm talking  
 20 about in his position, in the mayor's  
 21 position as chief executive of the city. Do  
 22 you advise him as to how to formulate policy  
 23 or give him any input in terms of  
 24 formulating policy on behalf of the city?

1 **what I did.**  
 2 Q. Have you ever gone to meetings on behalf of  
 3 the mayor, other than to take notes?  
 4 A. **No.**  
 5 Q. For Mayor Scanlon?  
 6 A. **No.**  
 7 Q. Have you ever represented the mayor at  
 8 functions outside of City Hall?  
 9 A. **No.**  
 10 Q. Earlier you had said that you made a list of  
 11 job qualifications to prepare for this  
 12 deposition. Is that what you stated  
 13 earlier?  
 14 A. **I wrote something out for my own benefit,**  
 15 **yes.**  
 16 Q. Did you prepare it with someone else or did  
 17 you do it on your own?  
 18 A. **I did it on my own.**  
 19 Q. Why did you prepare that list in order to  
 20 prepare for this deposition?  
 21 A. **Because I thought it might be one of the**  
 22 **questions that you would ask me.**  
 23 Q. In your capacity as executive secretary to  
 24 the mayor, do you advise the mayor as to

24

1 A. **Only if he asks me my opinion of something.**  
 2 Q. Has he ever asked you?  
 3 A. **Yes.**  
 4 Q. What types of things has he asked you about?  
 5 A. **I'm not sure that I can give you a specific**  
 6 **example. I mean, he may have a question,**  
 7 **say, about -- well, I also do things for the**  
 8 **License Board, and there's been some issues**  
 9 **with that with the city, so he may ask me**  
 10 **how things are done or what my opinion is,**  
 11 **but that doesn't necessarily mean that he**  
 12 **takes my advice or, you know, there are**  
 13 **times that he just asks me what I think**  
 14 **about things and I give him my answer and he**  
 15 **goes from there, but I don't think that I**  
 16 **feel that I am setting policy, as such.**  
 17 Q. Do you have a list of the duties that you  
 18 prepared?  
 19 A. **I did not bring one with me, no.**  
 20 Q. Okay. Have you been asked by the mayor to  
 21 influence other elected officials regarding  
 22 their policies?  
 23 A. **Absolutely not.**  
 24 Q. In terms of your salary as secretary, and

benefits, do you make more than the typical secretary in City Hall?

A. **Yes, I do.**

Q. Do you know the difference in salary, approximately?

A. **I do not.**

Q. When you say that, do you include the five thousand dollars that you receive as clerk to the License Board?

A. **No. My salary as secretary is separate. There are different levels of secretaries in the building, but I don't know what the amounts are, union negotiations.**

Q. Do you know if the secretary for the law department or the city solicitor's office is a union position?

A. **I believe that it is not.**

Q. Do you know the relative pay of that position as compared to your position?

A. **I don't.**

Q. Generally, what is your typical day as a secretary? How would you describe it?

A. **Well, answering the telephone, typing communications, dealing with constituents,**

27

**re-appointments of people to boards and commissions, I would just type up the letter. It's kind of a template. People looking for tag days, sometimes a constituent looks for information, I would maybe compose something and have the mayor look at it and approve it before I send it out, type of thing.**

Q. So is it fair to say unless something is in a template, the mayor would review it and approve it?

A. **Could you repeat that.**

Q. Is it fair to say that if something is not in template form or a form letter, then the mayor will review and approve that letter before it goes out?

A. **What I compose?**

Q. **Yes.**

A. **Yes.**

Q. When you say you have, you meet with department heads or department heads probably come in to meet with you?

A. **Not necessarily come in to meet with me, but they do come in or call and ask either for**

**directing with city employees, department heads. Every day is different. Doing payroll, paying bills, filing forms, when we take money in. That's probably a typical day.**

Q. You take cash in the mayor's office?

A. **Not cash, checks, because people are paying for certain things.**

Q. What type of things?

A. **Well, in the mayor's office, if people want copies made, we charge them for that. In my duties as the clerk of the License Board, people are paying for licenses and things like that.**

Q. These communications that you referred to previously, is the content of those communications, is that something that's given to you by the mayor, or is that something that you make up?

A. **Both.**

Q. What type of communications would you be determining the content of?

A. **Sometimes with things that are going to the city counsel, if it's kind of just general**

28

**some information or for me to give information to the mayor, and sometimes he'll ask me to call them and get information or to give them a directive of such, maybe ask them for something that he needs or explain something. If we have a constituent call wanting to know when their street is going to be paved, I would call the department and say when do you think that is.**

Q. And then call the constituent back?

A. **Yes.**

Q. And that's not something that you would typically have to discuss with the mayor because it happens frequently?

A. **Sometimes I do, sometimes I don't.**

Q. If the answer is the street is not going to be paved, you might tell the mayor that someone called and complained about that their --

A. **Perhaps, or sometimes he will make the call himself after he's asked me to get the information.**

Q. Do you ever sign any documents in your own

name that leave the office, or are they typically signed by the mayor or you sign it on behalf of the mayor and initial it? Documents that leave City Hall -- let me rephrase. Documents that are being sent out in the U.S. mail, for example, being sent to constituents, are those letters typically --

A. **Typically, not. Typically, the mayor signs them. Most often, he signs them, unless, for some reason, he's not going to be there, he'll say to me "Sign my name and initial it."**

Q. But even in that case, he's authorized you to send out a letter with his name and then you initial it?

A. **That's correct.**

MR. SHWARTZ: I'd like to have this marked. I believe this is Exhibit 5.

(Section 3-313 marked Exhibit No. 5 for Identification.)

Q. Ms. Giallongo, have you seen this Section 313 before today?

A. **What is this from?**

Q. I'm not sure. I was going to ask you that.

31

**I mean, I talk to them and I discuss things with them, but I don't sit down and have meetings with them, and yes, I do interact with them for the mayor.**

Q. The third subsection says that you "serve as a liaison officer between the mayor, the media, public interest groups, businesses and residents,

A. **I believe that that was a function of the administrative assistant to the mayor. I don't deal with the press. I don't meet with public interest groups. Sometimes I deal with businessmen and residents, but that, I believe, was a function of the administrative assistant position.**

Q. Who is performing that function now, as we speak?

A. **We don't have an administrative assistant to the mayor, so the mayor takes care of that.**

Q. So if you have the press calls, for example, on the phone to the mayor's office and you know it's a member of the press that's calling, you just forward that message to the mayor, correct?

A. **I'm not sure. I think that I have read it before but I'm not positive. I don't know what this is from. It might be from the Ordinance.**

Q. Can you recall the first time that you saw this document? You believe that you've seen it, correct? I just want to clarify that.

A. **I honestly don't know if I've seen it before.**

Q. Okay. Taking a look at the content, you're not sure if you've seen it before, C-1, 313, it states that the secretary shall, quote, organize and summarize information and prepare it for the mayor's review and action. Is that a fair statement as to one of the aspects of your job as secretary to the mayor?

A. **Yes.**

Q. No. 2 states that you "meet with department heads regarding day-to-day business," and that you expedite interaction between the mayor's office and city departments, is that a fair statement?

A. **I wouldn't say that I would meet with them.**

32

A. **That's correct.**

Q. You don't speak on behalf of the mayor, correct?

A. **If they have a general question for information, like what time the fireworks are going to be on Sunday, I might tell them that, but I don't discuss issues with the media.**

Q. Fair to say that you don't discuss the mayor's opinion as to certain policies with the press?

A. **That's correct.**

Q. As we've discussed this document, does that refresh your recollection as to whether or not you've seen it before?

A. **I believe I have seen it, but I don't know what it's from. I don't know if it's the Ordinance, and I don't believe it's the Charter.**

Q. Do you know if there's another page to this document?

A. **I would have to think there is, but I don't know that for sure.**

Q. It's fair to say you don't know what the

1 content is off the top of your head?  
 2 A. **No, I don't.**  
 3 (Letter dated January 5, 2004 marked  
 4 Exhibit No. 6 for Identification.)  
 5 Q. Have you seen this document before, Ms.  
 6 Giallongo?  
 7 A. **Yes.**  
 8 Q. Did you type up this document on behalf of  
 9 the mayor?  
 10 A. **I did.**  
 11 Q. Did you have any discussion with the mayor  
 12 regarding this content, other than the  
 13 content itself?  
 14 A. **No.**  
 15 Q. Does he dictate to you?  
 16 A. **Sometimes.**  
 17 Q. Do you recall as to whether or not he  
 18 dictated this letter to you?  
 19 A. **I don't recall.**  
 20 Q. Do you recall if this letter was mailed on  
 21 the date in question --  
 22 MR. SHWARTZ: Strike that.  
 23 Q. Do you have any reason to believe that this  
 24 letter wasn't sent on January 5?

35

1 Q. Do you know what happened to the letter  
 2 after you received it, other than -- did he  
 3 file the letter?  
 4 A. **I honestly don't know.**  
 5 Q. Did you talk with the mayor about the  
 6 letter?  
 7 A. **Did I discuss it?**  
 8 Q. Yeah.  
 9 A. **No.**  
 10 Q. So you've never discussed the contents of  
 11 this letter in terms of Ms. Atherton's  
 12 request for a hearing with Mayor Scanlon?  
 13 A. **No.**  
 14 Q. Have you spoken with anyone else at City  
 15 Hall regarding this letter, or the letter  
 16 that precipitated this response, other than  
 17 your counsel?  
 18 A. **I was just going to say I might have spoken**  
 19 **with the city solicitor about it, but no.**  
 20 Q. Did you receive a letter when you were --  
 21 when you left the city the time that you  
 22 left Mayor Crean's office, did you receive a  
 23 similar letter to the letter of January 5, I  
 24 believe?

9 of 15 sheets

1 A. **No.**  
 2 Q. So you believe that it was sent on the fifth  
 3 of January 2004?  
 4 A. **Yes.**  
 5 (Letter dated January 12, 2004 marked  
 6 Exhibit No. 7 for Identification.)  
 7 Q. Have you seen this letter dated January 12,  
 8 2004?  
 9 A. **Yes, I have.**  
 10 Q. How did you have knowledge of this letter?  
 11 A. **It came in the mail, I believe, and I opened**  
 12 **the mail.**  
 13 Q. Did you bring it to the attention of the  
 14 mayor?  
 15 A. **I did.**  
 16 Q. Do you know, as a result of this letter, did  
 17 the mayor do anything?  
 18 A. **I don't believe he did.**  
 19 Q. So when Ms. Atherton, in her last sentence,  
 20 requested a hearing pursuant to Section 815  
 21 of the Beverly Home Rule Charter, Mayor  
 22 Scanlon took no action as a result of that  
 23 request?  
 24 A. **Not that I'm aware of.**

36

1 A. **I did not.**  
 2 Q. Do you believe that Ms. Atherton's  
 3 termination was political?  
 4 A. **I don't have an opinion.**  
 5 Q. It's fair to say -- you stated earlier that  
 6 your termination was political, correct?  
 7 A. **I believed that it is, yes, or was.**  
 8 Q. Do you know if the mayor spoke with anyone  
 9 else at City Hall regarding the contents of  
 10 either the letter that he sent out on  
 11 January 5, 2004 or the response of  
 12 January 12, 2004, to anyone other than  
 13 counsel at City Hall?  
 14 A. **I don't know that.**  
 15 MR. SHWARTZ: I'm going to take a brief  
 16 recess.  
 17 (Recess.)  
 18 MR. SHWARTZ: Back on the record.  
 19 Q. You've stated that you believe that your  
 20 termination by Mayor Crean -- let me  
 21 rephrase that. You weren't formally  
 22 terminated, correct, by Mayor Crean, is that  
 23 a fair statement?  
 24 A. **I took retirement.**

1 Q. Why did you believe, at the time, that your  
2 leaving the office of Mayor Crean's was  
3 political?

4 A. Because I had initially thought about taking  
5 early retirement, and I had been told one  
6 thing by the retirement board as to what my  
7 pension would be. When I checked into it  
8 when it got closer to the time, the figures  
9 had changed considerably from what they said  
10 initially, and I had told Mr. Crean that I  
11 was not going to take the early retirement,  
12 and he told me if I did not take the early  
13 retirement that I would be fired, and I  
14 asked him why, and he said because he didn't  
15 want me in the office anymore, so it was  
16 either retire or get fired, and I believe  
17 that he felt as though I was not loyal to  
18 him, although that wasn't true, that's what  
19 I think what prompted him to tell me that,  
20 because I also asked could I be transferred  
21 to another department so I could finish out  
22 my retirement time, and he said he would  
23 have to think about it and never got back to  
24 me, so I just decided to move on.

39

1 it was similar to the January 5, I believe  
2 that was your question, and Ms. Giallongo  
3 just wanted to clarify something on the  
4 record.

5 THE WITNESS: You asked if I had  
6 received a letter similar to the one Ms.  
7 Atherton received, I did not, but the day  
8 that I was leaving, when my retirement date,  
9 the last day, as I was going down the hall,  
10 Mr. Crean tried to hand me a letter, and I  
11 refused to take it and he mailed it to my  
12 house. It wasn't a letter terminating me or  
13 anything like that. He was answering some  
14 of the things that I had said to the  
15 newspaper, so I just wanted to say -- when  
16 you asked me if I had received a similar  
17 letter, I hadn't.

18 MR. SHWARTZ: It wasn't a letter of  
19 termination?

20 THE WITNESS: No, it was not.

21 MS. CORBO: Okay. That was it.

22 MR. SHWARTZ: We'll go off the record  
23 and wait for that document.

24 (Recess.)

1 Q. Why do you believe that he felt that you  
2 were not being faithful to him? What  
3 was --

4 A. Loyal to him.

5 Q. Loyal to him.

6 A. Because I had maintained a friendship with  
7 Mayor Scanlon, but never in the time that I  
8 worked for Mr. Crean did I ever discuss  
9 anything that went on in the office with  
10 Mayor Scanlon.

11 Q. Is it fair to say that you were loyal to all  
12 the mayors that you worked for?

13 A. I believe I was, yes.

14 Q. Do you have any reason to believe that Ms.  
15 Atherton, during her employment as secretary  
16 to the mayor, was anything but loyal?

17 A. I have no way to know that.

18 MR. SHWARTZ: I have no further  
19 questions.

20 MS. CORBO: Can we have a minute?  
21 (Recess.)

22 MS. CORBO: Attorney Schwartz had asked a  
23 question about whether or not she had  
24 received a similar letter from Mayor Crean,

40

1 MR. SHWARTZ: Back on the record, Ms.  
2 Giallongo, we're going back on the record,  
3 and I'm going to continue my direct  
4 questions of you. We have -- can we  
5 stipulate on the record that this is the  
6 complete 313 that was in effect at the time  
7 that Ms. Atherton was terminated?

8 MS. CORBO: I would probably just want  
9 to double check that with Noreen. I don't  
10 know if there's another page that didn't  
11 come through. I assume it is because this  
12 is what's been provided by fax.

13 MR. SHWARTZ: Can we go off the record,  
14 (Discussion off the record.)

15 (Complete Section 3-313 marked Exhibit  
16 No. 6 for Identification.)

17 MR. SHWARTZ: Exhibit 8 is Section 3-313  
18 and we -- it's fair to say that we've  
19 stipulated to the fact that that is a true  
20 and accurate copy of the "Confidential  
21 Secretary/Administrative Assistant to the  
22 Mayor" job description as it existed on  
23 December 1, 2003 as it was approved.

24 MS. CORBO: I think we can stipulate



that this is the job duties as specified in the Ordinance. I think there might be a separate job description, so I wouldn't stipulate that this is the only job description for the position, but I would stipulate that this is, what's been marked as Exhibit 8, is Section 3-313. It is entitled "Confidential Secretary/Administrative Assistant to the Mayor", and it is the official version that we believe is contained within the Ordinance of the city, which were in effect and approved prior to Ms. Atherton's termination.

Q. Okay. Ms. Glallongo, I'm going to have a few more questions about this document, because it has just been brought to our attention. Have you seen this before, this document?

A. **I probably have seen it in the Ordinance book, but it was after I left City Hall, so it's not something that I was aware of.**

Q. Have you seen it since you returned back to the City?

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residents?

A. **Yes.**

Q. You review the correspondence when it comes in to the mayor's office or when it leaves the mayor's office?

A. **Yes, I do.**

Q. You file the same, you file those documents?

A. **Yes.**

Q. In appropriate areas within the office?

A. **Well, typically when the correspondence comes in, some things I automatically handle. Say somebody writes in looking for a tag day, rather than give that to the mayor, I just prepare the letter saying that they can have a tag day and then I put it there for his signature, and I put it in the file. Other things that require his attention, I put in his office on his desk for his review, and sometimes I might make him a note or a suggestion or whatever or a reminder of something that may have happened relative to that correspondence.**

Q. Finally, in Subsection 7 says that you would answer the calls placed into the office.

A. **Like I say, I may have seen it in the Ordinance book, but I don't remember having read it, I honestly and truly don't.**

Q. Have you seen other job descriptions regarding the position of executive secretary?

A. **I believe when the human resources department was established that there was a job description written up, but that was long after I had started working for the City and the mayor. It was when the Charter changed and they established the human resource department, but yes, I have seen one.**

Q. Looking at the document, we had already discussed Subsection C-1, 2 and 3?

A. **Yes.**

Q. I'd like to discuss 4, familiarity with aspects of the city government and functions of the city government. That's one of the functions that you --

A. **Yes, I am familiar with them.**

Q. And that you're familiar with various services rendered by the City to its

44

Fair to say the mayor doesn't typically answer the phones when calls are incoming?

A. **Typically, I answer the phone, but yes, he does answer the phone sometimes.**

Q. You said earlier that Mayor Crean had someone called the administrative assistant?

A. **Actually, he was called the chief of staff.**

Q. Chief of staff, I'm sorry. Who was that?

A. **His name was Robert Belliere.**

Q. What were his functions, at least for the 11 months that you were there?

A. **I honestly don't know. He worked very closely with the mayor. He wrote most of the mayor's correspondence, but other than that, I'm not sure, because most of the time when the two of them met they closed the doors.**

Q. You never sat in on any of the meetings, took dictation?

A. **No.**

Q. With respect to this 3-313, this document we've marked as 8, this is a -- refers to a job description that includes both the administrative assistant and the

confidential secretary, correct?

**A. When I was looking at the one that you gave us before, do we know what this is, because I have a feeling that this is part of what the administrative assistant position.**

**Q. I'm not sure. I presume that's 3-312, but I do not know what that is.**

**MR. SHWARTZ:** Can we go off the record for a second.

**A. What I'm saying is, this says "Confidential Secretary/Administrative Assistant to the Mayor". I'm not sure how that was, but when the first administrative assistant came into the office, it was under Mayor Monahan. Some of the things that were on here are the things that she did. Like multiple member bodies and divisions of the city council and the mayor, she would go to those meetings, I didn't, so I don't know if this is part of what the chief of staff position was or not because the administrative assistant, as I knew her, didn't do these duties. These were my duties, the confidential secretary to the mayor.**

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**MS. CORBO:** Are we on the record?

**MR. SHWARTZ:** Yeah, I think we still are. We never went off the record.

**Q. Can you think of any other duties and responsibilities that aren't listed here that you do or that are inherent in your position as secretary to the mayor that aren't listed here?**

**A. Well, things like doing his correspondence, typing documents that he wants done, like the annual report, all of those things, that's not in here, but doing the payroll, doing accounts receivable, accounts payable, so I'm not sure what you're asking me.**

**Q. Are there other duties or responsibilities as you know it, as you understand as executive secretary to the mayor, that aren't listed there that are crucial to the position of being executive secretary to the mayor, other than the ones you just listed a second ago?**

**A. Sometimes I would sit in, I haven't done it really recently, but in other occasions I have taken minutes to meetings that he's**

**Q. Just to follow-up one thing. In terms of Subsection 3, which we had discussed earlier, there are aspects of that that you do not do?**

**A. That's true, so it's sort of like one's overlapping the other, but I don't know.**

**MS. CORBO:** I'm not sure that there's that much of a conflict. I mean, here it's called chief administrative aide, not administrative assistant to the mayor, so I would assume that there is another position and it might be this one is actually chief administrative aide.

**THE WITNESS:** That's what I was trying to say.

**MS. CORBO:** Okay, but you were referring to it as the administrative assistant.

**THE WITNESS:** Well, when the woman first came in, that's what her title was, administrative assistant. That's why it's confusing, the titles have changed over the years.

**Q. Just my final question. I think this will be it. Other than the responsibilities --**

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**had, hearings he might have had relative to grievances from departments or from employees or whatever. We don't do that as much now as before because of the human resource department, but I guess that pretty much sums it up.**

**Q. In that capacity it was just keeping records of what was taking place during that meeting?**

**A. That's correct.**

**MR. SHWARTZ:** Okay. No further questions.

**MS. CORBO:** I actually just have a couple.

#### **CROSS-EXAMINATION**

(By Ms. Corbo)

**Q. Ms. Giallongo, do you have any access to the mayor's e-mail?**

**A. Yes.**

**Q. What type of access do you have? Do you review it when it comes in?**

**A. All of his e-mails come in on my computer.**

**Q. What about in terms of the mayor's speeches or communications with the public, do you**

1 have any responsibility for typing those?

2 A. **I type everything that he does.**

3 Q. So if he has a speech that's he's going to  
4 make --

5 A. **Speeches, press releases, correspondence,  
6 annual report, whatever needs to be typed,  
7 letters to state agencies, whatever. I type  
8 all of those. Occasionally, the city  
9 planner may do one if it's technical, but  
10 typically, I type just about everything that  
11 goes out of the office.**

12 Q. What about the mayor's whereabouts, do you  
13 have any responsibility for keeping track of  
14 where he's going or his meetings?

15 A. **Yes, I keep his calendar. I set his  
16 appointments, make sure that he gets where  
17 he's supposed to be when he's supposed to be  
18 there.**

19 Q. Do you have any responsibility for  
20 communicating his position on any certain  
21 issues to department heads?

22 MR. SHWARTZ: Objection. You can  
23 answer.

24 A. **Yes, sometimes I do.**

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1 that I have.

2 MR. SHWARTZ: I have a few questions  
3 based on what you just said.

#### 4 **REDIRECT EXAMINATION**

5 (By Mr. Shwartz)

6 Q. Ms. Corbo just mentioned that you have come  
7 across documents or create documents that  
8 are not considered public records? Let me  
9 go back a step. What is your understanding  
10 of what a public record is?

11 A. **My understanding is that anything that has  
12 to do with City communications are open to  
13 the public. I would not consider, I don't  
14 know that this is true, but I would not  
15 consider anything that comes in about  
16 litigation to be a public document at the  
17 time that it comes into my office.**

18 Q. Any other documents, based upon your  
19 understanding, other than litigation  
20 documents?

21 A. **No.**

22 Q. What about litigation documents where the  
23 litigation has already ended, what is your  
24 understanding of that?

1 Q. Can you give me an example?

2 A. **Well, recently, Chief Pierce, the fire  
3 chief, had sent an e-mail to the mayor  
4 asking him how he wanted to handle a  
5 particular grant receipt. Well, the City  
6 was going to receive a grant and the fire  
7 chief wanted to know how the mayor wanted to  
8 handle it, if he wanted to do it himself or  
9 with the city council, so the mayor asked me  
10 to call the chief and tell him that he would  
11 prefer to have it done as part of the city  
12 council and asked when it would happen.**

13 Q. Your responsibility for e-mails and  
14 correspondence that comes into the office,  
15 does that include materials that may be  
16 considered confidential and not public  
17 records?

18 MR. SHWARTZ: Objection.

19 A. **Yeah.**

20 Q. Do you have any exposure or access to  
21 confidential matters such as litigation that  
22 the City is involved in?

23 A. **Yes.**

24 MS. CORBO: That's all the questions

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1 A. **I believe then it would become a public  
2 record.**

3 Q. So when Ms. Corbo was asking you about  
4 public records, she was just referring to  
5 litigation records, in your mind, that are  
6 records that are not public records? Let me  
7 clarify that.

8 A. **I'm not --**

9 Q. She asked you if you had come across  
10 litigation records in one of her questions,  
11 correct?

12 A. **Yes.**

13 Q. And you said you do, and then I believe that  
14 she asked whether or not you come across  
15 documents or create documents that are not  
16 public records. Are there any other  
17 documents, in your mind, that are not public  
18 records that do not involve litigation,  
19 based upon your understanding of what a  
20 public record is?

21 A. **No, I don't believe so. I was thinking in  
22 terms of litigation as a non-public record.  
23 I'm not sure that I understand the question.**

24 Q. If it's your belief that the only type of

records that are not public are litigation,  
correct, is that a fair statement?

A. **Well, things that I'm aware of in my office. I mean, some of the things that I do with the License Board are not public record, and I know that. I believe some of the things, CORI's are not public records, those kinds of things, but I thought you were talking in terms of my office. I'm sorry.**

Q. No, I'm talking, for the most part, your office. In terms of your position as secretary to the mayor and in terms of documents that you come across in that capacity --

A. **I'm not sure what would be not considered a public record.**

Q. How can you answer the question if you don't know what you consider to be a public record? You can't.

MS. CORBO: Are you answering for her or are you asking her?

MR. SHWARTZ: No, I'm asking her a question.

MS. CORBO: If you don't understand his

question, just say you don't understand it.

Q. I'm just trying to get an idea as to what you subjectively believe to be a public record in order to answer Ms. Corbo's question, so I'm trying to get clarification, but if you do not --

MS. CORBO: I'll be happy to re-ask my question in a different manner that's less confusing.

MR. SHWARTZ: I have no further questions. If you want to answer my question, it's still open to you.

Q. Ms. Corbo previously asked you whether or not you came across any public records. Then I had asked you a line of questions as to what --

MS. CORBO: Any public records?

MR. SHWARTZ: No, any records, documents, that were not public records. I'm sorry.

Q. Then I asked you a line of questions to determine what, in your mind, constituted public records, and you told me litigation files that you've come across in your

55

capacity as executive secretary, and I asked you if you've come across any other records in your capacity as executive secretary.

MS. CORBO: Objection.

Q. Have you come across any other documents, other than litigation records, that are not public records in your capacity as executive secretary to the mayor?

MS. CORBO: Objection. Go ahead, you can answer it.

A. **I don't believe that I have.**

MR. SHWARTZ: Okay. I have no further questions.

MS. CORBO: Just one further question.

#### RECROSS EXAMINATION

(By Ms. Corbo)

Q. Ms. Giallongo, do you have a complete and full understanding of the public records law?

MR. SHWARTZ: Objection.

A. **I guess I don't, because I assume that most everything that comes across my desk is public record, except litigation, and I guess that's not correct.**

56

MS. CORBO: Thank you, Linda.

MR. SHWARTZ: Nothing further.

(Whereupon the Deposition was concluded at 3:29 p.m.)

1 DEPONENT'S ERRATA SHEET  
2 AND SIGNATURE INSTRUCTIONS  
3  
4 The original of the Errata Sheet  
5 has been delivered to Atty. Elizabeth Curbo.  
6 When the Errata Sheet has been  
7 completed by the deponent and signed, a copy  
8 thereof should be delivered to each party of  
9 record and the ORIGINAL delivered to Atty.  
10 Eric Schwartz to whom the original deposition  
11 transcript was delivered.

#### 12 INSTRUCTIONS TO DEPONENT

13  
14  
15 After reading this volume of your  
16 deposition, indicate any corrections or  
17 changes to your testimony and the reasons  
18 therefor on the Errata Sheet supplied to you  
19 and sign it. DO NOT make marks or notations  
20 on the transcript volume itself.  
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1 ATTACH TO THE DEPOSITION OF LINDA P.  
2 GIALONGO

3 CASE: AHERTON vs. CITY OF BEVERLY

#### 4 ERRATA SHEET

5 INSTRUCTIONS: After reading the transcript  
6 of your deposition, note any change or  
7 correction to your testimony and the reason  
8 therefor on this sheet. DO NOT make any  
9 marks or notations on the transcript volume  
10 itself. Sign and date this errata sheet  
11 (before a Notary Public, if required).  
12 Refer to Page 57 of the transcript for  
13 errata sheet distribution instructions.

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# Exhibit 1



VOLUME: I  
 PAGES: 1 - 93  
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UNITED STATES DISTRICT COURT  
 COMMONWEALTH OF MASSACHUSETTS

C.A. # 05-11323 MLW

CRYSTAL A. ATHERTON  
 And ROBERT W. ATHERTON,  
 Plaintiffs,  
 vs.

CITY OF BEVERLY, WILLIAM F. SCANLON, JR.,  
 in his official and individual capacity  
 and JOHN DUNN, in his official and individual  
 capacity,  
 Defendants.

DEPOSITION OF CRYSTAL A. ATHERTON, a witness  
 called on behalf of the Defendants, pursuant to  
 Massachusetts Rules of Civil Procedure, before  
 Carolyn McGill, a Shorthand Reporter and Notary  
 Public in and for the Commonwealth of Massachusetts,  
 for Kopelman & Paige, P.C., 101 Arch Street, Boston,  
 Massachusetts, held at Beverly City Hall, 191 Cabot  
 Street, Beverly, Massachusetts on Tuesday, October  
 16, 2007 commencing at 10:44 a.m.

# INDEX

## DEPONENT

## PAGE

Crystal A. Atherton

Examination by Ms. Corbo

4

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## APPEARANCES

KOPELMAN & PAIGE, P.C.,  
 (By Elizabeth Corbo, Esq.)  
 101 Arch Street,  
 Boston, MA 02116,  
 On behalf of the Defendants.

SHAPIRO & HENDER,  
 (By Jordan L. Shapiro, Esq.)  
 (By Eric Shwartz, Esq.)  
 640 Main Street,  
 Malden, MA 02148,  
 On behalf of the Plaintiffs.

Also Present: Robert A. Munroe, Esq., City of  
 Beverly.

## P-R-O-C-E-E-D-I-N-G-S

### STIPULATIONS

It was stipulated and agreed by  
 and between counsel for the respective parties  
 that the witness will read and sign the  
 deposition transcript and the sealing, filing  
 and certification thereof are waived.

**Crystal Atherton**, having been  
 satisfactorily identified by the production of  
 her driver's license and duly sworn by the  
 Notary Public, called on behalf of the  
 Defendants, on oath deposes and says as follows:

### Examination by Ms. Corbo:

Q. Good morning, Miss Atherton. My name  
 is Elizabeth Corbo and I represent the City of  
 Beverly, Mayor Scanlon and John Dunn in the  
 action you've brought against the City of  
 Beverly.

Have you ever been deposed before?

A. No.

Q. I'm going to give you a small set of  
 instructions which your attorney can add to if

1 he likes that will help you through this  
2 proceeding.

3 First, if you need a break at any  
4 time just ask for it. There's no magic to  
5 sitting for a certain number of hours. So if  
6 you're uncomfortable, you want to consult with  
7 your attorney, you need a break, you can take  
8 one at any time. The only thing I ask is if  
9 there's a question pending that you answer the  
10 question and then you can take the break.

11 If I ask a question and it's not  
12 clear, please just ask me to rephrase it. I  
13 will be happy to do that. If there's a question  
14 that you don't understand please say so. If you  
15 don't say so I'm going to assume you've  
16 understood the question. Is that okay?

17 A. Yes.

18 Q. And when you're going to make a  
19 response to a question please make sure that  
20 it's a verbal response so that it can be recorded  
21 by the stenographer. Shakes of heads and nods  
22 cannot be recorded for the record. Okay?

23 A. Yes.

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6

1 Q. All right. Also let's endeavor not to  
2 talk over each other. Sometimes that happens.  
3 You get to be in a flow of a conversation. I  
4 won't quite finish asking my question and then  
5 we'll talk over each other and that's also hard  
6 for the stenographer to record for the record.  
7 Okay?

8 A. I understand.

9 Q. All right. Miss Atherton, can you  
10 tell me how old you are today?

11 A. Sixty-nine.

12 Q. What is your date of birth?

13 A. June 13, 1938.

14 Q. Could you state your full name for the  
15 record?

16 A. Crystal Anne Atherton.

17 Q. How old were you when you were  
18 terminated with the City of Beverly in January?  
19 I think it was January.

20 A. I must have been about sixty-six.

21 Q. Sixty-six?

22 A. I'm sixty-nine. And this is 07.

23 MR. SHAPIRO: Think to yourself.  
LEAVITT REPORTING, INC.

1 A. Yeah, I was sixty-five and a half I  
2 believe.

3 Q. And you were going to turn sixty-six  
4 that June?

5 A. Right.

6 Q. Do you live in Beverly, Miss Atherton?

7 A. Yes, I do.

8 Q. Have you lived in Beverly all your  
9 life?

10 A. Not all my life. All my married life.

11 Q. How many years have you been a  
12 resident of the city?

13 A. Over forty.

14 Q. Can you give me a brief background of  
15 your employment history from -- let's do your  
16 educational background first. Where did you go  
17 to high school?

18 A. I went to high school in Danvers. I  
19 was a resident of Danvers, brought up in Danvers  
20 and graduated from Houghton High School in 1956.

21 Q. And you graduated with a diploma?

22 A. Yes.

23 Q. Did you go on to any type of finishing  
LEAVITT REPORTING, INC.

8

1 school or college?

2 A. From there I went to Burdett College  
3 which was a two year legal secretarial course I  
4 took there. That was a two year college.

5 Q. Other than Burdett do you have any  
6 advanced degrees or certifications?

7 A. I went to Salem State College and I  
8 have a degree in Office Management. I also took  
9 the certification program at Bentley College in  
10 Waltham for paralegal so I'm a certified  
11 paralegal.

12 Since then I have taken numerous  
13 courses mostly for computers at North Shore  
14 Community College, Gordon College, the  
15 vocational school in Middleton. I have taken a  
16 lot of courses relative to computers and new  
17 software programs.

18 Q. When was the most recent computer  
19 class that you've taken?

20 A. It was when I was working for the  
21 purchasing agent of the city. I went there in  
22 97. Probably 99.

23 Q. Since 1999 have you taken any classes?  
LEAVITT REPORTING, INC.

1 A. I would say no.

2 Q. Just to backtrack a little bit, when  
3 did you finish at Burdett?

4 A. 1960.

5 Q. And Salem State?

6 A. 86.

7 Q. When did you receive your paralegal  
8 certification?

9 A. It was before my college degree from  
10 Salem State so it was in between. I'm not sure  
11 of the year.

12 Q. Would that be reflected on your  
13 resume?

14 A. It might be.

15 Q. When did you begin your first  
16 employment out of high school?

17 A. My first position after high school?

18 Q. Yes.

19 A. Going back to when I did waitress  
20 work?

21 Q. You don't have to name every job.  
22 Let's say your first job that you were at for  
23 more than three years.

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10

1 A. Okay. My first job after I got out of  
2 Burdett College, I worked for Paul and James  
3 Liacos in Peabody. I worked for them for  
4 probably ten years either full-time for  
5 part-time. That was my first full-time job.

6 Q. What were your job duties there?

7 A. I was a legal secretary.

8 MR. SHAPIRO: L I A C O S.

9 Q. After you left there?

10 A. I had children. I had twins. And  
11 even though I wanted to continue to work that  
12 wasn't possible with two small babies. So I  
13 probably didn't work for maybe five years except  
14 for part-time.

15 The Liacoses would call me now and  
16 then and ask me if I could come in for two or  
17 three weeks or a month. I did tax returns for  
18 them. So I would continue to go in if I could.  
19 But I didn't do any full-time work until my  
20 children went to the first grade.

21 Q. When was that?

22 A. I can't remember the dates. They were  
23 born in 1961. They were seven. They were six.

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1 Probably 1967, 68.

2 Q. Do you recall where you went?

3 A. Yes. I went to work for the law firm  
4 of Sandry McDonald in Lynn and I worked for them  
5 on and off either full-time or part time for  
6 over a period of twenty years.

7 Q. After this law firm in Lynn where did  
8 you go?

9 A. I came to the City of Beverly.

10 Q. Do you recall when you started with  
11 the City?

12 A. It was in February of 1987.

13 Q. Where was the first position you held?

14 A. The first position was in this room as  
15 a legal secretary to Adam Ricci.

16 MR. SHAPIRO: R I C C I.

17 Q. Was Mr. Ricci the City Solicitor at  
18 the time?

19 A. He was at the time.

20 Q. How long were you legal secretary for  
21 the City Solicitor?

22 A. Mr. Ricci or all the solicitors I  
23 worked for.

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12

1 Q. In a continuous amount of time?

2 A. Ten years.

3 Q. Did you do paralegal work at that time  
4 as well?

5 A. Yes.

6 Q. Where did you go from the City  
7 Solicitor's Office?

8 A. From the City Solicitor's Office I  
9 went to the second floor for Christopher Bradley  
10 who was the purchasing agent of the City of  
11 Beverly as his assistant.

12 Q. Do you recall what year that was?

13 A. I believe it was 97.

14 Q. How long did you stay as a purchasing  
15 assistant?

16 A. I was there from 97 until 2002.

17 Q. In 2002 where did you go?

18 A. I went into the Mayor's Office for  
19 Mayor Crean as his secretary.

20 Q. That was the last position you held  
21 with the City of Beverly?

22 A. Yes.

23 Q. You held that position until --

LEAVITT REPORTING, INC.

1 A. Until I was terminated in January of  
2 2003.

3 Q. When were you notified by Mr. Crean  
4 that he would like you to be his executive  
5 secretary?

6 A. I actually wasn't notified by him.  
7 The Human Resource Director came into my office  
8 on the second floor and asked me if I would be  
9 willing to fill in in the Mayor's Office until  
10 the job was posted and filled and advertised.

11 Q. Was the job ever posted to the best of  
12 your knowledge?

13 A. To the best of my knowledge it was  
14 advertised.

15 Q. Did you apply for the position when it  
16 was advertised?

17 A. I was in the office for about three  
18 weeks before I applied for the position. I felt  
19 comfortable there and it was a substantial  
20 increase in salary.

21 Q. Prior to going into the Mayor's Office  
22 did you have any relation with Mr. Crean? Did  
23 you know him? Were you familiar with him?

LEAVITT REPORTING, INC.

14

1 A. Yes, I did.

2 Q. How were you familiar with him?

3 A. The first contact I had with Mayor  
4 Crean was when he was running for the office.  
5 He called my home and he asked me several  
6 questions about the City charter and City  
7 ordinances because people had told him that I  
8 had been working on all these Ordinance Review  
9 Committees without any success in getting any  
10 ordinances passed in the city.

11 He wanted to understand what the  
12 purposes of these ordinances were, why I was so  
13 concerned that they weren't being passed. And  
14 he told me if he was elected he would be more  
15 than happy to help me accomplish that.

16 Q. Explain to me if you can your  
17 participation or involvement in the Ordinance  
18 Review Committee?

19 A. Which one?

20 Q. How many were there?

21 A. The first ordinance review committee  
22 was a committee that is mandated in the charter.  
23 It requires that the committee implement the

LEAVITT REPORTING, INC.

1 provisions of the charter. And it gives I think  
2 it's one year to do the work. I was appointed  
3 by Mayor Scanlon to that committee. And we  
4 finished our work and presented it to the  
5 Council.

6 Q. Could you tell me, do you happen to  
7 recall what provision of the charter that's  
8 mandated in?

9 A. I don't.

10 Q. You said you were appointed by Mayor  
11 Scanlon. Do you remember what year that was?

12 A. It had to be 1996 I believe. The  
13 charter was voted in in 1995 and immediately  
14 thereafter we formed -- the committee was  
15 formed. And there was a requirement in the  
16 charter that two of the members of this  
17 committee had to have been former charter  
18 members.

19 Q. Were you a former charter member?

20 A. Yes, I was.

21 Q. What years did you serve on the  
22 Charter Committee?

23 A. I think I was elected to that position

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16

1 in either 91 or 92. And that was a two -- I  
2 think it was a two year commitment. I'm not a  
3 hundred percent sure. It seemed like it was  
4 forever.

5 Q. What was the process for election to  
6 that position on the Charter Committee?

7 A. That was a city wide election.

8 Q. What were your responsibilities on the  
9 charter committee?

10 A. Mine personally or just all charter  
11 members?

12 Q. Let's talk about yours personally.

13 A. Personally I was very much interested  
14 in the organizational structure of the City. I  
15 had been working in the Law Department  
16 approximately five years at the time of my  
17 election to the Charter Commission so I was very  
18 much aware of some of the deficiencies that  
19 existed in city government here.

20 And I was very interested in  
21 working on the section of the charter relating  
22 to the administrative offices and the  
23 organizational structure.

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1 Q. Did you have specific responsibilities  
2 or a specific mission that you were supposed to  
3 be carrying out as part of this Charter  
4 Committee?

5 Let me rephrase that. What was  
6 the purpose of the Charter Committee?

7 A. To go over the old city charter and  
8 try to make a better charter that would be --  
9 that had more checks and balances, that was more  
10 open to citizens that they'd be able to  
11 understand what department is doing what, where  
12 their tax dollars were going. So it was a  
13 matter of efficiency to have a more efficient  
14 government.

15 Q. And so basically was the purpose to  
16 revise the charter?

17 A. Yes.

18 Q. So did you do that?

19 A. Yes, we did.

20 Q. The charter as it stands currently  
21 enacted, is that the charter that you worked on?

22 A. Yes.

23 Q. Did the committee make certain  
LEAVITT REPORTING, INC.

18

1 recommendations to the City and the City  
2 Council?

3 A. The way that it was done was there was  
4 a preliminary report filed with the City Council  
5 and filed with the Attorney General's Office.  
6 If there were anything in that charter that was  
7 not in compliance with state law or anything  
8 that the Attorney General felt wasn't right then  
9 we'd get a letter back telling us that we had to  
10 revise that part of the charter before it would  
11 be accepted.

12 Q. The revision of the charter was  
13 accomplished in two years?

14 A. Yes.

15 Q. When was it voted on for acceptance by  
16 the City?

17 A. 1995.

18 Q. At that time were there also city  
19 ordinances?

20 A. Yes, there were.

21 Q. You mentioned that you had  
22 participated in Ordinance Review Committee?

23 A. Right.

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1 Q. The first one being in, was it 1996?

2 A. It was right after the charter was  
3 enacted so it would have had to have been close.  
4 I'm not sure if it was 96 or late 95 or sometime  
5 in that area.

6 Q. What was the purpose of the ordinance  
7 review committee in 1996?

8 A. To write ordinances and revise the  
9 ordinances that were already on the books in the  
10 City of Beverly because many of the ordinances  
11 that were there were no longer valid.

12 Q. How many ordinance committees did you  
13 serve on?

14 A. Two.

15 Q. Approximately 1996 and when was the  
16 second one?

17 A. The second one was formed I believe  
18 somewhere in 97. But I didn't get appointed to  
19 that committee until sometime in maybe 2001.

20 Q. So the one that was formed in 1997  
21 went until 2001?

22 A. Yes.

23 Q. Who appointed you?

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20

1 A. I believe it was the President of the  
2 City Council, Paul Guanci. He called and asked  
3 me if I'd be willing to work with them as they  
4 had been working on the ordinance for over four  
5 years and had not gotten anywhere.

6 Q. So when you joined in 2002 what were  
7 some of your primary duties and  
8 responsibilities?

9 A. I think it was 2001.

10 Q. Sorry. 2001. You're correct.

11 A. They asked me if I would work on the  
12 section that was at that time called the  
13 Administrative Code which was the organizational  
14 structure of the City of Beverly as it then  
15 existed written in words instead of just on an  
16 organizational chart with what the duties and  
17 responsibilities of each department was, who the  
18 appointing authority was, what the powers of the  
19 office were, and to put that all in writing for  
20 many purposes including the use of the public.

21 Q. Did you work on that?

22 A. Yes, I did.

23 Q. Was it completed?

LEAVITT REPORTING, INC.



1 A. Yes, it was.

2 Q. Once you had a completed document for  
3 all -- was it for all the positions in the City?

4 A. This was the second ordinance review  
5 group. The first one we did try to have passed  
6 and the second one we tried too.

7 Q. Did the second one get passed?

8 A. Not at first. It went before the  
9 Council and Mayor Scanlon and who was now the  
10 City Solicitor, Roy Gelineau. And several other  
11 people came and said that the document was  
12 fatally flawed and asked the Council not to pass  
13 it.

14 Q. The Council did not pass it at that  
15 time?

16 A. Right.

17 Q. Do you recall what year that was?

18 A. No, I don't. I'm sorry.

19 Q. It was after 2001 obviously?

20 A. Yes. It was somewhere right around  
21 that time.

22 Q. After the document did not pass what  
23 was the next step that you participated in?

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22

1 A. I think by that time Mayor Crean had  
2 been elected and we needed funds to pay -- I  
3 told the Ordinance Review Committee that there  
4 was no way that we could draft this document  
5 without professional assistance. And the  
6 Charter Commission and the original ordinance  
7 review had hired an attorney, Michael Curran,  
8 who I considered an expert in charters and  
9 ordinances.

10 And I felt that if the ordinances  
11 were ever going to be written and passed that we  
12 needed an expert attorney to assist us in  
13 drafting the document.

14 So Mayor Crean and the City  
15 Solicitor agreed that they would fund that. I  
16 think the money came out of the City Solicitor's  
17 budget to pay Mr. Curran for his legal services  
18 to the City.

19 Q. Did you personally have any more  
20 involvement in the ordinances after the point  
21 that Mr. Curran was hired?

22 A. I continued working on the ordinances  
23 until they were finally passed in December of

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1 2003. Probably a week before I was terminated  
2 they were finally passed which I considered a  
3 very big accomplishment in my life since I had  
4 spent over ten years attempting to have the  
5 charter in place with new ordinances.

6 Q. When you had worked on what was  
7 originally referred to as the administrative  
8 code regarding the organizational structure of  
9 the City did you work on a section that dealt  
10 with the confidential executive secretary for  
11 the Mayor?

12 A. This is in what year now are we  
13 talking?

14 Q. It would be after 2001.

15 A. Okay. Yes. The answer is yes.

16 Q. Did anyone assist you in drafting the  
17 section regarding the confidential executive  
18 secretary?

19 A. I believe that all of the duties and  
20 responsibilities that were listed in the charter  
21 came from the Human Resource Department from job  
22 specs that were in already on file with the  
23 City.

LEAVITT REPORTING, INC.

24

1 Q. You had said all the job duties listed  
2 in the charter. Was it the charter or the  
3 ordinance?

4 A. The ordinance. In other words, I went  
5 to the Human Resource Department and got all of  
6 the job specs for the positions that were going  
7 to be in the ordinances.

8 Q. Were there other sections of the  
9 ordinances that you didn't participate in  
10 drafting?

11 A. I would say I participated in most of  
12 it but I didn't do any like research work. Some  
13 of the boiler plate type language that's in all  
14 charters, I didn't participate in any research  
15 or work to write those.

16 Q. How many members were on the Ordinance  
17 Review Committee when you were elected or  
18 assigned in 2001?

19 A. I don't know if it was seven or nine.  
20 I'd have to look at the charter.

21 Q. Did everyone have a specific section  
22 of the ordinance that they were responsible for?

23 A. Not really in that group. The charter

LEAVITT REPORTING, INC.



1 commission did. But the ordinance review group,  
2 I don't believe that people were responsible for  
3 any particular section.

4 Q. Was most of your work primarily on the  
5 administrative code slash organizational makeup  
6 of the City?

7 A. More than fifty percent.

8 Q. Okay. Now, when you were working as  
9 the executive confidential secretary to the  
10 Mayor, Mayor Crean I should be specific about,  
11 when did you first learn that your job in that  
12 position may be in jeopardy?

13 A. I'm not sure of the month. I should  
14 know but it was after the primary election. And  
15 Mayor Crean had done very poorly in that  
16 primary. And Mayor Scanlon was running and I  
17 believe he made comments to the newspapers that  
18 if he did win the final election he would be  
19 replacing certain people. And I was one of  
20 those persons.

21 Q. Did he name you in the newspaper  
22 article?

23 A. No, I don't believe he named me  
LEAVITT REPORTING, INC.

26

1 specifically, but he said that he was going to  
2 be bringing back his old secretary. So  
3 obviously if I was working as the secretary in  
4 the Mayor's Office you could put two and two  
5 together pretty easily that he was referring to  
6 my position.

7 Q. Do you know who his prior secretary  
8 was?

9 A. Linda Giallongo.

10 Q. Do you have any knowledge as to what  
11 happened to her when Mayor Crean came into  
12 office?

13 A. Only hearsay what people talked about  
14 or what I read in the newspaper. I didn't have  
15 any personal conversation with her or anyone.

16 Q. Or Mayor Crean?

17 A. No.

18 Q. I'm not interested in the hearsay at  
19 this point.

20 A. Okay.

21 Q. I'm going to show you a document.

22 A. Where am I looking?

23 Q. I'm going to give you a copy of a  
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1 highlighted document that might be easier.

2 A. What's the question?

3 Q. That is a copy of a newspaper article.

4 And I'm going to ask you whether you  
5 recognize -- they quote you in this article.

6 I'm going to ask you whether you recognize the  
7 quote. The first quote states --

8 A. The first quote I did say. The second  
9 quote I didn't say.

10 Q. That she's waiting to be terminated?

11 A. Yes.

12 Q. And then later in the article it says  
13 that "I knew the risk," Atherton said. "I could  
14 have sat tight in Purchasing."

15 A. I never said that.

16 Q. Do you recall being interviewed for  
17 this article?

18 A. It was not really an interview. I was  
19 in the copy room across the hall and the  
20 newspaper people were doing a newspaper article  
21 on how you feel knowing that you're going to  
22 lose your job.

23 And I just didn't think it was  
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1 appropriate and I kind of just fluffed him off  
2 and said, I'm waiting to be terminated.

3 I didn't have any interview. I  
4 didn't sit down with anybody. It was just off  
5 the cuff in the hallway. I never made the  
6 comment I could have sat tight in Purchasing.  
7 That's not something I would say.

8 Q. Do you recall when this article was  
9 written?

10 A. No, I don't.

11 Q. Did you see this article at the time  
12 it was first published, do you recall?

13 A. I must have because, you know, it  
14 involves Changes In Store at City Hall. It's  
15 something I would have looked at.

16 I had a habit of reading newspaper  
17 articles and even saving them. This one I  
18 didn't. I don't know why. I didn't keep this  
19 article.

20 Q. Did you ever notify the paper after  
21 having read it that you were incorrectly quoted?

22 A. No.

23 (Exhibit No. 1, Newspaper Article;  
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1 so marked.)

2 Q. When was your first conversation with  
3 Mayor Scanlon about you continuing in your  
4 position as confidential executive secretary  
5 after he was elected Mayor or as he was elected  
6 Mayor?

7 A. The first conversation I had with him  
8 was via telephone somewhere in mid December. I  
9 remember it very well because it was very  
10 upsetting. He called me in the evening, perhaps  
11 around seven o'clock. He asked me to retire.

12 And he told me he wasn't going to  
13 keep me in the position, and that it would be  
14 best for the City and for me and everyone else  
15 if I retired.

16 I told him I didn't want to  
17 retire, that I was healthy. I had energy. I  
18 wanted to continue working for the City. I  
19 wanted to do it for many reasons, for my own  
20 personal benefit because I enjoyed it, but also  
21 because I wanted to increase my pension benefits  
22 in the future. And I wanted to continue earning  
23 the money and savings into my retirement

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1 account, the private retirement account that I  
2 was paying into in addition to the City's  
3 retirement account.

4 So all of these things were  
5 important to me and I wanted to stay in  
6 employment for two or three years I told him.  
7 And I asked him if he could assign me to the  
8 School Department or any other job in the City  
9 I'd be willing to take. And his comment was I  
10 do not have a job for you.

11 Q. So you told him during that  
12 conversation that you had a personal retirement  
13 account and you wanted to continue earning  
14 money?

15 A. Yes. I also told him that I didn't  
16 think he had the power under the charter to  
17 terminate my employment.

18 Q. What was his response?

19 A. He didn't answer me at all.

20 Q. You stated that you'd asked to be  
21 assigned to the School Department?

22 A. I asked any job, anywhere, if it was  
23 the City or the School Department so I could

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1 continue paying into my retirement account and  
2 continue working.

3 Q. Did you specifically mention the  
4 school department?

5 A. Yes, I did.

6 Q. Was there a particular position at the  
7 School Department that you were aware of?

8 A. I didn't know. I just said I'd be  
9 willing to take any job anywhere. I would even  
10 go into the school department.

11 Q. At that time during your conversation  
12 with the then Mayor Scanlon, he had been elected  
13 at that time?

14 A. Yes.

15 Q. Were you aware of any openings in the  
16 City?

17 A. Yes. After my phone call with him and  
18 I definitely knew he was going to not keep me in  
19 that position, I went to see the President of  
20 the Union and asked him if there were any  
21 options at all, any place in the City; that I  
22 wanted to continue my employment and I would be  
23 willing to take any job that was open.

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1 He initially told me that he  
2 didn't think there were any positions open at  
3 the time but about a week later he came up to  
4 the Mayor's Office and he said there was an  
5 opening in the Building Inspector's Office, that  
6 some employee there had recently been terminated  
7 for possibly absconding with some funds and that  
8 that position was open and would I be interested  
9 in it.

10 I didn't tell him that day that I  
11 was. I talked it over with my husband and then  
12 I went down and saw Jerry Marsella and I said I  
13 would like to take that job. I've discussed it  
14 with my husband and it's something I'd like to  
15 do. And he told me if I wanted to continue  
16 working he would support me.

17 Q. Was Jerry Marsella the President of  
18 the Union at the time?

19 A. Yes.

20 Q. What happened at that point? Did you  
21 submit an application to the Building  
22 Department?

23 A. No, because from what I understood

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1 from the Union contracts, and even though I  
2 wasn't a member of the Union, there was a  
3 confidential secretary's ordinance that said  
4 that we were entitled to the same benefits as a  
5 Union member.

6 And there was a section in the  
7 Union contract that provided for employees to be  
8 transferred from one department to another if  
9 there was an opening. And I believe they had  
10 three months to show that they were capable of  
11 doing the job.

12 So I believed from the Union  
13 contract that I was entitled to any opening  
14 there was in the City of Beverly.

15 Q. As a result of that ordinance?

16 A. As a result of the Union contract.

17 Q. And the order --

18 A. And the ordinance that said I was  
19 entitled to the same benefits as a Union member.

20 Q. So what happened with the position in  
21 the building department? Did you receive it?  
22 Did you not receive it?

23 A. I did not receive it.

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1 Q. Did you tell anyone in the City that  
2 you were interested in that position besides  
3 Jerry Marsella who was President of the Union,  
4 any city officials or department heads?

5 A. No.

6 Q. Do you know who was hired into that  
7 position that you were seeking?

8 A. No.

9 Q. Do you know if anyone was hired into  
10 that position?

11 A. I don't know.

12 Q. Do you recall approximately what point  
13 in time this was? Was this still December?

14 A. Yes. It was before I left.

15 Q. What was your next contact with Mayor  
16 Scanlon regarding your position as confidential  
17 executive secretary?

18 A. Via phone or via letter or whatever?

19 Q. Either.

20 A. Some time after the phone call I  
21 received the first letter sometime in December,  
22 I'm not sure of the date, asking me I believe to  
23 resign.

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1 Q. How did you respond to that?

2 A. I believe I wrote a letter back to him  
3 telling him I didn't wish to resign. I wanted  
4 to stay employed. I think I asked again that he  
5 assign me to another position. I think I  
6 pointed out in that letter that I didn't believe  
7 he had the authority to terminate my employment  
8 with the city.

9 Q. Do you recall the approximate date of  
10 the letter that you wrote back to him?

11 A. It would have had to be sometime in  
12 December I believe, late December.

13 Q. Did Mayor Scanlon respond to the  
14 letter that you wrote?

15 A. I think I got another letter. The  
16 second letter was after January and he had  
17 already taken oath of office and was in the  
18 Mayor's Office at the time.

19 And I believe he wrote me a second  
20 letter, one paragraph that just said you are  
21 hereby removed from your position as secretary  
22 and your position as clerk to the Licensing  
23 Board effective immediately I think it said.

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1 Q. So in addition to holding the position  
2 of confidential executive secretary you also  
3 held a position on the Licensing Board?

4 A. Clerk.

5 Q. What were your job duties and  
6 responsibilities on the Licensing Board?

7 A. It was to administrate the program and  
8 keep the three members of the licensing board  
9 up-to-date on people filing for new licenses,  
10 people turning in licenses, people calling and  
11 writing that one of the license holders had not  
12 complied with the licensing laws.

13 It was mostly paperwork. We met  
14 once a month. I provided them all monthly with  
15 all the documents that were going to be  
16 presented to them at the meeting. I took the  
17 minutes. I typed the minutes up. I had them  
18 recorded and filed all the documents that were  
19 presented to me by -- it would be mostly  
20 attorneys who represented people applying for  
21 licenses. So they would bring me a packet and I  
22 would present that to the members of the  
23 licensing board.

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1 Q. How long did you serve as clerk for  
2 the licensing board?

3 A. The entire time I was in the Mayor's  
4 Office.

5 Q. Was that a position that you received  
6 by virtue of holding the confidential executive  
7 secretary position?

8 A. Yes.

9 Q. Did you receive separate pay for that  
10 position?

11 A. Yes.

12 Q. I'm sorry. The clerk of the licensing  
13 board position?

14 A. Yes. There was a separate line item.  
15 The board received a certain amount and the  
16 secretary received a certain amount.

17 Q. Was it a stipend?

18 A. I think it was referred to as a  
19 stipend in the ordinance book.

20 Q. How much was that?

21 A. It was \$5,000 a year.

22 Q. Was that paid in a lump sum or was it  
23 monthly installments?

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1 A. It was monthly. I believe it was the  
2 first of the month.

3 Q. How often were you paid your salary  
4 for the executive secretary position?

5 A. That was paid weekly.

6 Q. After you received the letter from  
7 Mayor Scanlon notifying you that you'd been  
8 removed from your position as confidential  
9 executive secretary did you have any further  
10 communication with the Mayor regarding that?

11 A. I'm trying to think. I don't believe  
12 I did. Everything was by mail. I don't believe  
13 we had any conversations at all.

14 Q. Did you send him another letter? I'm  
15 sorry. When I say communication I mean either  
16 telephone or written communication.

17 A. I would have to look through my own  
18 file and find those documents to see. I know I  
19 got two letters from him. I responded to those  
20 in that letter and then I asked for a hearing  
21 because I believed I had a right to a hearing  
22 under Section 815 of the city charter.

23 Q. Do you recall approximately when you

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1 requested a hearing under 815?

2 A. I know it would have been within so  
3 many days after receiving that termination  
4 notice because the charter required that. I  
5 know I looked at the charter and I complied with  
6 the timeframe.

7 Q. Did you receive any response from the  
8 City regarding your request for a hearing?

9 A. Yes, I did.

10 Q. Do you recall what that was?

11 A. I believe it was from the City  
12 Solicitor and it was his opinion that I was not  
13 entitled to a hearing.

14 Q. After receiving that response from the  
15 City Solicitor did you take any further action  
16 by contacting the city?

17 A. Yes. I called the City Solicitor some  
18 time in January.

19 Q. Who was the City Solicitor at the  
20 time?

21 A. It was Roy Gelineau.

22 Q. What was your conversation with Mr.  
23 Gelineau?

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1 A. My conversation was that I was seeking  
2 a position in the city anywhere. That I wanted  
3 to continue working. I asked him if -- I still  
4 believed at that time that there was an opening  
5 in the Building Department. So I asked him if  
6 he would intercede with the Mayor on my behalf  
7 and ask him to please give me that position.  
8 And he said he would. But I never heard from  
9 him again.

10 Q. Regarding the position in the Building  
11 Department, did you ever file any grievances or  
12 take any administrative appeal regarding your  
13 failure to get the Building Department position?

14 A. No.

15 Q. Why not?

16 A. It was obvious to me that the Mayor  
17 didn't want me working for the City of Beverly.  
18 And I just said to myself after a while, I'm  
19 hitting my head against the wall. That was it.  
20 He's not going to give you a job. I really  
21 didn't want to involve other people either.

22 Q. When you say it was obvious what do  
23 you base that on?

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1 A. I base it on him asking me to retire,  
2 to give up my position, to give up my employment  
3 with the City of Beverly that meant a lot to me,  
4 his refusal to even consider giving me a job,  
5 telling me I have no job for you. Just his  
6 whole attitude and demeanor was one that he  
7 didn't want me working for the City of Beverly.

8 Q. So basically his phone conversation  
9 with you and letters that he sent to you?

10 A. Right.

11 Q. Was there anything else?

12 A. In that time period I can't think of  
13 anything.

14 Q. After your conversation with the City  
15 Solicitor was there any other further  
16 communication from the city or from you to the  
17 City regarding a job at City Hall?

18 A. No.

19 Q. At that point in time did you make  
20 efforts to find other employment?

21 A. Yes.

22 Q. What efforts were those?

23 A. I made phone calls to some of the  
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1 local city halls to see if they were hiring. I  
2 stopped into a couple of them and talked to the  
3 people at the desk about jobs.

4 And at that particular time most  
5 of the cities and towns were lessening their  
6 work force. They were offering early retirement  
7 incentives and they were under pressure in their  
8 budgets because of health insurance costs and  
9 pensions. And it was just a time when there  
10 were not jobs available in cities.

11 Q. What cities did you stop in or call?

12 A. I went to the Town of Wenham and the  
13 Town of Hamilton. I believe I went there.  
14 Salem I called. Danvers I think I stopped in  
15 one day and asked one of the women if there were  
16 any job options. There was no jobs available in  
17 any city government, local, that I was aware of.

18 Q. So did you ever submit any employment  
19 applications or did you just inquire?

20 A. I just inquired.

21 Q. Did you seek any private sector  
22 employment?

23 A. I did. After I gave up on the cities  
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1 I started checking the newspapers every day to  
2 see if I could find something in maybe a  
3 paralegal job or a legal secretarial or  
4 something that I felt was in my line and would  
5 pay me a descent salary. I never was able to  
6 find anything. All the jobs I saw in the paper  
7 were low paying positions.

8 Q. When you say low paying, how much are  
9 you referring to as low paying?

10 A. I would say clerks in stores or --  
11 probably I imagine minimum wage.

12 Q. At the time you were terminated from  
13 the city do you recall how much you were making  
14 a week?

15 A. The position -- the City -- are you  
16 talking about all my salary or just my salary as  
17 the secretary?

18 Q. Could you break it down for me? Do  
19 your salary as a secretary separately and  
20 anything else that you consider wages let me  
21 know what those are.

22 A. I believe when I left the City my  
23 salary for the executive secretarial position  
LEAVITT REPORTING, INC.

1 was 877 per week.

2 Q. Were there any other moneys that you  
3 considered salaries or wages?

4 A. I was earning \$5,000 a year as a clerk  
5 which was part of my duties in the office of the  
6 Mayor and I paid taxes on.

7 Q. You pay taxes on the 5,000. Do you  
8 also pay other like retirement? Is retirement  
9 taken out of the 5,000?

10 A. Yes.

11 Q. Anything other than the 877 and the  
12 \$5,000 a year that you consider wages or  
13 compensation?

14 A. I think that probably we had a program  
15 in effect called the wellness program. And if  
16 you had over so many sick days on account you  
17 could request up to five days if you had not  
18 been absent for that previous year. And I think  
19 I did that on one occasion and that was included  
20 on my W-2 form as federal taxable wages.

21 Q. So you could get paid out five of your  
22 sick days?

23 A. Yes.

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1 Q. If you had perfect attendance?

2 A. If you had perfect attendance and you  
3 had so many days in your account.

4 Q. Do you recall what year you got paid  
5 out those five sick days?

6 A. I think it was the last year I was  
7 there. It would probably be 2002.

8 Q. At some point in time you stated that  
9 you began looking for private employment. Do  
10 you recall when approximately that was?

11 A. Let me see. January and February I  
12 was still hoping I could get a job back with the  
13 City so I didn't really pursue anything else.  
14 March I was checking with local cities and  
15 towns. So it would be April, May and June.

16 Q. Of what year?

17 A. Of 2003.

18 Q. After June did you make any decisions  
19 regarding continuing employment or continuing to  
20 look for employment?

21 A. No. I had decided at that point that  
22 I would probably file for my retirement money  
23 because I could have got that money in January

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1 of 2002. So I knew I could collect that and  
2 there was no reason to have money that was due  
3 me that I wasn't taking.

4 Q. So when did you file for retirement,  
5 if you did?

6 A. I believe it was in August of 2003.

7 Q. Was your application for retirement  
8 immediately approved?

9 A. Yes.

10 Q. Was there a dispute about the amount  
11 of retirement benefits that you had with the  
12 retirement board?

13 A. Yes.

14 Q. Can you tell me what the basis of that  
15 dispute was?

16 A. Basically I had worked -- I had filed  
17 in August. And I had been earning \$3,000 a year  
18 and paying into the pension plan on that 3,000.  
19 So much per month was taken out of that check  
20 for the retirement board.

21 I believed that I was entitled to  
22 the nine months as part of my creditable service  
23 from January until when I filed for my

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1 retirement.

2 Initially the administrator agreed  
3 with me and my first two checks were based on  
4 that additional nine months of service. After I  
5 received about two checks I got an e-mail from  
6 her saying that one of the members of the board  
7 didn't think that I was entitled to that money.

8 Q. Can I back you up?

9 A. Yeah.

10 Q. I'm not as familiar with this aspect  
11 of the retirement proceedings. So you had said  
12 you were earning \$3,000 a year I believe?

13 A. Right.

14 Q. What was that for?

15 A. That was for my services on the  
16 retirement board.

17 Q. So you served as a member of the  
18 retirement board?

19 A. Right.

20 Q. How long were you on the retirement  
21 board?

22 A. You're asking me such hard questions.

23 Q. You're doing very well with dates.

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1 A. I was three years the first term,  
2 three years the second term. I would say seven  
3 years.

4 Q. Is that an elected position?

5 A. Yes.

6 Q. City wide election?

7 A. No. It's an elected position of the  
8 members of the retirement system. I believe  
9 there are approximately twelve hundred members.

10 Q. Did you receive the \$3,000 each year  
11 that you served?

12 A. Yes.

13 Q. Was that considered wages?

14 A. Yes.

15 Q. You paid taxes on the \$3,000?

16 A. Yes.

17 Q. Who paid you the \$3,000? Who issued  
18 the money?

19 A. The check came to me from the City of  
20 Beverly.

21 Q. What were some of your  
22 responsibilities on the retirement board?

23 A. Monthly meetings, managing millions of

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1 dollars, meeting with the money managers. At  
2 the time we had five or six money managers and  
3 had the moneys in different sectors of the  
4 market.

5 So there was a lot of time spent  
6 meeting with these managers as to how our money  
7 was doing, how the market was doing, what they  
8 predicted ahead of time.

9 We also voted on refunds for  
10 people who had left the system. We had to vote  
11 on whether or not a person who was asking for a  
12 disability pension would get that disability  
13 pension. There was a lot of work on that board.

14 Q. How many other people were on the  
15 board with you?

16 A. Five. Four. The whole membership is  
17 five and I was one of the five. So there were  
18 four members.

19 Q. After your termination from the city  
20 in January did you continue to serve on the  
21 retirement board?

22 A. Yes. I believe I had just been  
23 re-elected at the time of my termination so I

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1 had a three year term.

2 Q. When did you finish your service on  
3 the retirement board after your most recent  
4 election?

5 A. I'm on the board now.

6 Q. You continue to serve to this date?

7 A. Yes.

8 Q. Do you continue to receive the \$3,000  
9 stipend or payment?

10 A. Yes.

11 Q. Is that paid in a lump sum or monthly  
12 or weekly?

13 A. It's monthly.

14 Q. So when you filed for retirement in  
15 August they had initially included that \$3,000  
16 in your retirement benefit calculation?

17 A. No. That went there anyway. What  
18 they had included was the nine months of service  
19 to the City which was -- one of the numbers that  
20 you need to figure your pension is how many  
21 years you worked, how old you were and what your  
22 salary was.

23 Q. I see. So it wasn't the money it was

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1 the creditable service?

2 A. It was the creditable service.

3 Q. You were receiving credit or you  
4 initially received credit for the nine months?

5 A. Right.

6 Q. And what happened, did something  
7 change that?

8 A. One of the members questioned whether  
9 or not I should be receiving that creditable  
10 service from the time of my termination.

11 Q. So the issue became whether or not  
12 your service on the retirement board constituted  
13 eligible service?

14 A. Would you repeat that?

15 Q. Did the issue become whether or not  
16 your service on the retirement board constituted  
17 creditable service?

18 A. Yes.

19 Q. Can you tell me what happened with  
20 that dispute?

21 A. How it ended finally or the whole  
22 story?

23 Q. How long is the whole story?

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1 A. It ended finally that on appeal the --  
2 the original decision was in my favor.

3 Q. Was that with CRAB?

4 A. No, it wasn't. The original decision  
5 was from DALA and that was in my favor. Then  
6 the board appealed it. It went to CRAB and CRAB  
7 overturned the decision of DALA and then I  
8 didn't take it any further.

9 MR. SHAPIRO: If you want copies  
10 of some of those decisions we have that. But I  
11 don't think it was responsive to any of the  
12 requests that you had. I don't think you knew  
13 about it maybe until today.

14 MS. CORBO: Thank you for that.

15 Q. So at this point the retirement moneys  
16 that you receive now are not including the nine  
17 months of service from January to approximately  
18 September?

19 A. I only received two checks that  
20 included that time. And then when the question  
21 came up of whether or not that service was  
22 considered creditable service they stopped it.

23 Q. Can you tell me, is the \$3,000

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1 included in your retirement benefits that you  
2 received while you were on the retirement board  
3 all those years?

4 A. It's used in the calculation of my  
5 three years highest pay.

6 Q. What about the \$5,000 that you  
7 received as clerk on the licensing board, is  
8 that also included in your highest three years?

9 A. Yes.

10 Q. At some point in time after your  
11 termination there became a dispute about moneys  
12 that you felt were owed from the city and you  
13 had not received, is that correct?

14 A. Yes.

15 Q. Can you tell me what moneys you felt  
16 you were owed from the city and had not  
17 received?

18 A. I sent a letter to the Human Resource  
19 Department after I filed my request for  
20 retirement and I believe I asked for any funds  
21 that were due to me under the city ordinance or  
22 Union contracts including vacation pay, personal  
23 days, longevity if I had it coming to me, sick

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1 leave buy back.

2 Those are the only ones I can  
3 remember specifically listing. There may have  
4 been other money that I think I may have just  
5 added at the end and any other moneys that are  
6 due to me relative to my employment with the  
7 City of Beverly.

8 Q. Do you recall the approximate date of  
9 when you sent that letter?

10 A. It was after I filed for -- I filed  
11 in August for my retirement so I believe it  
12 probably would have been September or October.

13 Q. Of 04 or 03?

14 A. Of 03 I believe.

15 Q. Did you receive a response from the  
16 City?

17 A. Yes, I did.

18 Q. I'm going to show you a document.  
19 Could you please take a look at that for me?  
20 Let me know whether or not you recognize it?

21 A. Yes, I do.

22 (Exhibit No. 2, 11/7/04 Letter to  
23 Atherton; so marked.)

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1 (Discussion off the record).

2 MR. SHAPIRO: It appears that  
3 there have been some errors in the years that we  
4 have been referring to. We now realize that it  
5 was December 2003 when Miss Atherton was  
6 terminated and when Crean lost his re-election  
7 and when Mayor Scanlon was elected. So she was  
8 terminated in January of 04.

9 I think that there may have been  
10 times when we were thinking and saying that she  
11 was terminated in January of 2002 or 2003 when  
12 in fact the termination date is obviously and  
13 clearly January 5, 2004.

14 Q. Is that correct, Miss Atherton?

15 A. Yes.

16 Q. So would it be fair to say that the  
17 conversation, the telephone conversation that  
18 you had with Mayor Scanlon in December was in  
19 December of 2003 not December 2002?

20 A. Correct.

21 Q. And the correspondence that you  
22 received from the Mayor notifying you that you  
23 were no longer employed by the City was in

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1 January 2004, is that correct?

2 A. December of 2003 and January of 2004.

3 Q. Okay. The letter that you received  
4 from the Mayor stating that he was removing you  
5 from your position, do you recall when you  
6 received that?

7 A. January of 2004.

8 Q. I just wanted to clarify that for the  
9 record.

10 All right. Exhibit Number Two has  
11 been marked. Do you recognize this document  
12 that's been marked as Exhibit Two, Miss  
13 Atherton?

14 A. Yes, I do.

15 Q. Can you tell me in your own words what  
16 this document is?

17 A. It's a letter from the Finance  
18 Director of the City of Beverly, John Dunn, in  
19 response to my request for moneys I believed due  
20 to me at the time of my termination.

21 Q. If I could go through the letter with  
22 you, for vacation days, did you have any dispute  
23 with the way John Dunn in this letter calculated

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1 what was owed to you for vacation days?

2 A. I had a dispute as to the salary, not  
3 the time.

4 Q. What was the nature of the dispute  
5 regarding the amount of payment for the vacation  
6 days?

7 A. Because I believed that my salary  
8 included both the moneys that I received as a  
9 clerk to the licensing board and for my job as  
10 secretary. So he was paying me here just for  
11 the secretarial salary and I believed that I was  
12 entitled to both.

13 Q. You were entitled to a calculation  
14 that included the moneys you received for the  
15 secretarial salary and the \$5,000 for the  
16 licensing board?

17 A. Yes.

18 Q. Do you know of anyone else in the city  
19 who has received vacation payments including  
20 stipends or additional payments outside their  
21 main position salary?

22 A. I don't know of anyone.

23 Q. Moving down to personal days, he  
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1 states that you accrued three personal days.  
2 Was the number of the personal days to your  
3 recollection correct?

4 A. That part is correct.

5 Q. What about the calculation of the  
6 moneys owed?

7 A. The calculation would be the same  
8 problem I had with the vacation days, that it  
9 didn't include the \$5,000 I earned per year as  
10 the clerk to the licensing board.

11 Q. What about paragraph three, the  
12 longevity and beneficial payments?

13 A. I did receive those.

14 Q. I should say in the first paragraph  
15 three because there's another paragraph three  
16 just below.

17 In the first paragraph three,  
18 longevity, were there any problems with the way  
19 he had calculated that?

20 A. No.

21 Q. Now in what's been marked --

22 A. I'm sorry. Wait a minute. Can I go  
23 back on that?

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1 Q. Sure.

2 A. Because when I received those, when I  
3 left in 2003, those two payments I never  
4 actually looked at the calculation. So I can't  
5 say to you now here that I believed that the  
6 calculations are correct.

7 Q. Conversely do you believe that they  
8 are incorrect? Do you have any reason to think  
9 that they are?

10 A. Now that I'm looking at the second  
11 one, the wellness incentive payment, that may  
12 not have been my true salary at the time. The  
13 500 I don't have a problem with because that was  
14 part of the Union contract that you'd receive  
15 500 for longevity after so many years of  
16 service. I believe it was ten years.

17 Q. But the 693.28, you think that may not  
18 have been based upon the correct salary?

19 A. Correct.

20 Q. Meaning it may not have included the  
21 5,000?

22 A. Right.

23 Q. Do you know whether it did or didn't?  
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1 A. No, I don't. In fact, I never thought  
2 of it before until just looking at it now. I  
3 believe that check I received was in one lump  
4 sum for my final week's pay including the 500.  
5 I never really broke it all down as to what was  
6 for what.

7 Q. The sick leave buy back which is in  
8 the second paragraph three on the first page, in  
9 that paragraph, correct me if I'm wrong, Mr.  
10 Dunn takes the position that because you were  
11 terminated from the city and did not immediately  
12 retire that you are not entitled to sick leave  
13 buy back. Is that what you understand that  
14 paragraph to mean?

15 A. Let me read it. Would you repeat the  
16 question?

17 Q. I'll make it easy. What do you  
18 understand Mr. Dunn to be saying in regards to  
19 your request for sick leave buy back? What was  
20 his position?

21 MR. SHAPIRO: Objection. You can  
22 answer.

23 A. Quite frankly I don't understand it.  
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1 I don't understand what he's trying to say here.  
2 He says the time period between when I was  
3 terminated and when I retired is too long to say  
4 that employment was terminated by retirement.

5 It's true that employment was  
6 terminated by something other than retirement.  
7 I was fired. But I don't know what that has to  
8 do with the sick leave buy back.

9 Q. Do you know of anyone else in the city  
10 who was fired who was able to buy back sick  
11 time?

12 A. Not anyone -- well, wait a minute.  
13 Fired. Not fired. I believe that there was a  
14 gentleman in the Collector's Office. And I had  
15 read an article in the newspaper that he was  
16 attempting to get his sick leave buy back after  
17 he had been terminated for over two years.

18 But he didn't realize he was  
19 entitled to the money until someone spoke to him  
20 about it and then he asked for it. I believe he  
21 was negotiating with the city for that amount.

22 Mr. Dunn, in the newspaper, stated  
23 that Mr. Acciavatta deserved the money. But the  
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1 reason the City had not paid it was because  
2 there was a problem with the calculation.

3 Q. Was that Thomas Acciavatta?

4 A. Yes

5 Q. You believe he was terminated?

6 A. I don't think he was terminated. I  
7 think he wasn't reappointed. He was the person  
8 who had a job that was appointed. So when his  
9 time was up, his latest appointment, I think the  
10 Mayor just didn't reappoint him.

11 Q. So his term expired?

12 A. Right.

13 Q. Do you know whether he applied for  
14 retirement after his term expired?

15 A. I don't. No, I don't know anything  
16 about Mr. Acciavatta, only what I read in the  
17 paper about him attempting to get his sick leave  
18 buy back.

19 Q. At some point in time did the city  
20 issue you a check for payment of vacation and  
21 benefits?

22 A. Yes, I did get a check from the city  
23 which I never cashed because as I said to you I  
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1 didn't believe that it was the correct amount.

2 MR. SHAPIRO: When you finish this  
3 area I wouldn't mind a break.

4 Q. What happened with the check?

5 A. It's in the file.

6 Q. What file?

7 A. My file.

8 (Short recess).

9 Q. So Miss Atherton, it would be correct  
10 to say that you never cashed the check that was  
11 issued by the City for vacation benefits and  
12 personal days?

13 A. No, I didn't.

14 Q. Did you make any response to Mr.  
15 Dunn's letter that's been marked as Exhibit Two?

16 A. I don't believe I responded to Mr.  
17 Dunn. I don't remember writing any letter back  
18 to Mr. Dunn.

19 Q. Did you take any further action to  
20 seek these additional compensation that you felt  
21 you were owed? For example, did you file a  
22 complaint with the Attorney General's Office?

23 A. Yes, I think my attorney did. I think  
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1 at this point this is when I had finally reached  
2 a point where I couldn't handle any more myself  
3 and decided that I had to hire an attorney. So  
4 from this point forward I relied upon Mr.  
5 Shapiro.

6 Q. Okay. Do you recall whether or not a  
7 complaint was filed at the Attorney General's  
8 Office?

9 A. I believe he did.

10 Q. Do you know what the result of that  
11 complaint was?

12 A. No, I don't.

13 Q. Were there any other proceedings that  
14 you recall with the City that followed this  
15 November 7, 2004 letter from John Dunn with  
16 regards to wages or compensation payments,  
17 internal proceedings within the City?

18 A. I've just drawn a blank. All I know  
19 is once I received this letter I just said to  
20 myself, I'm just going to hire an attorney to  
21 help me out because now in addition to losing my  
22 job the City is refusing to pay me money that I  
23 believe that I had earned over working twenty  
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1 years.

2 Q. I'm going to show you a document.  
3 This is something that came to me through your  
4 attorney in a response to my Request for  
5 Production Of Documents. Can you tell me  
6 whether you recognize that document?

7 A. Yes, I do.

8 (Exhibit No. 3, Atherton Record of  
9 Compensatory Time; so marked.)

10 Q. Could you tell me what this document  
11 is? Is this a log or record that you kept?

12 A. This was a little log that I had in my  
13 top drawer when I was working in the Mayor's  
14 Office.

15 Q. It dates back to September 30?

16 A. That was probably the first week I was  
17 working in the Mayor's Office.

18 Q. Do you know if that was September 30,  
19 2003?

20 A. Yes. I was working in the Mayor's  
21 Office in 2003.

22 Q. Can you tell me what these numbers  
23 represent, these five hours on the side of the  
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1 document?

2 A. They represent compensatory time that  
3 I was recording because during those months I  
4 never took any lunch or any breaks or anything.  
5 And Mayor Scanlon noticed that I was not leaving  
6 the building for lunches or break time.

7 And I told him that there was so  
8 much work to be done between the licensing board  
9 and his office and trying to get up to speed in  
10 a position that I had not had any training for  
11 at all, just put in there, that I had to work  
12 these extra hours. And he told me to keep a  
13 record and he would give me compensatory time.

14 Q. Which mayor was that?

15 A. Mayor Crean.

16 Q. Was this a log that you kept daily or  
17 weekly?

18 A. Weekly.

19 Q. This was something that was generated  
20 contemporaneously? It wasn't generated after  
21 the fact?

22 A. No.

23 Q. Was this a log that was kept

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1 contemporaneously?

2 A. Yes.

3 Q. What was the final total of  
4 compensatory time that you believed you were  
5 owed at the time of your termination?

6 A. Forty-five hours.

7 Q. At the bottom of your calculation  
8 there's also a date. It looks like it says  
9 January 23?

10 A. Yeah.

11 Q. Were you employed by the City at that  
12 time?

13 A. Yes. I see what this is now. This is  
14 not 2003. This is 2002 to December, the first  
15 months of my employment. This is 2002 that I  
16 went upstairs. Then I worked all of 2003. So  
17 this was the first three or four months that I  
18 was in the Mayor's Office that I kept this  
19 record.

20 Q. So it would go September 2002?

21 A. Yeah, I believe so.

22 Q. What would January --

23 A. January would have been 2003.  
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1 Q. Okay. After January 23, 2003 did you  
2 stop working your extra hours for compensatory  
3 time? Why is there no further?

4 A. Because by then I felt that I could  
5 take a lunch hour.

6 Q. After January 23, 2003 it would be  
7 fair to say that there were no more hours that  
8 were accumulated as compensatory time?

9 A. That's true.

10 Q. Over in the left-hand corner it looks  
11 like, the bottom left-hand corner, it looks like  
12 it says vacation days. The copy is not that  
13 great. I can't really make it out. Do you  
14 recall what it says there?

15 A. I don't really to tell you the truth.

16 Q. Then just below that it states  
17 election something. I can't read that.

18 A. I think that was election week and  
19 probably took off for compensatory time two  
20 days, the 4th and the 5th which would have been  
21 the difference between the fifty-nine hours and  
22 the 45 I still felt I had remaining.

23 Q. Okay. Does the City have any policy  
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1 on compensatory time that you're aware of?

2 A. I know that people do receive  
3 compensatory time but I'm not sure what the  
4 exact written policy is.

5 Q. Can you think off the top of your head  
6 of any other individuals that you know of who  
7 have taken compensatory time?

8 A. That I know of throughout the whole  
9 city?

10 Q. Right. If you can think of a couple  
11 of examples.

12 A. Fire department.

13 Q. Any employees within City Hall?

14 A. I'm not sure.

15 Q. I'm going to show you another document  
16 and ask if you can identify this document for  
17 the record?

18 A. This is the Complaint and the lawsuit.

19 (Exhibit No. 4, Complaint and  
20 Demand for Jury Trial; so marked.)

21 Q. Miss Atherton, I'd like you to review  
22 what's been marked as Exhibit Four. And we have  
23 gone through many of the allegations already I

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1 believe in your Complaint but there were a few  
2 things that I did want to ask you about.

3 If you could direct your attention  
4 to page seven, paragraph thirty-nine, the  
5 allegation there is that you were discharged  
6 because of your political beliefs or  
7 affiliation?

8 A. I believe that to be true.

9 Q. Could you explain that to me why you  
10 believe that? What's the factual basis for your  
11 belief?

12 A. Well, the Mayor himself in his own  
13 deposition stated that my affiliation with Mayor  
14 Crean was his, I believe, reason for not keeping  
15 me in the position.

16 Q. At the time this complaint was filed,  
17 at the time this complaint was drafted, I  
18 believe that Mayor Scanlon had not then been  
19 deposed.

20 So other than Mayor Scanlon's  
21 deposition, do you have any personal belief that  
22 would support your allegation that you were  
23 terminated because of your political beliefs or

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1 affiliation?

2 A. I was working for Mayor Crean at the  
3 time Mayor Scanlon was re-elected. And I  
4 believe that was why he fired me because of my  
5 affiliation with Mayor Crean.

6 Q. Did you actively support or campaign  
7 for Mr. Crean?

8 A. I supported him. I supported him  
9 publicly. I perhaps gave money to his campaign.  
10 I talked to him several times about the charter  
11 and the ordinances and he was willing to help me  
12 in my endeavor to get the ordinances in place.

13 Q. When you say you supported him  
14 publicly what do you mean by that?

15 A. I told my friends and my neighbors and  
16 people that I knew that they should give him  
17 consideration in the election.

18 Q. Did you have a sign on your house or a  
19 sign on your lawn?

20 A. No. I have a small business on my  
21 property and I just don't feel it's appropriate  
22 to have political signs.

23 Q. What kind of business do you have?  
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1 A. It's a garden business, a garden shop.

2 Q. Do you sell flowers?

3 A. Yes.

4 Q. How long have you owned that business?

5 A. It's my husband's business and I never  
6 worked in it. He's probably had it for over --  
7 he retired in 1990 and he opened that business  
8 in 1990.

9 Q. What's the name?

10 A. Rose Hill Farm.

11 Q. In paragraph thirty-eight there's  
12 allegations that you were threatened with  
13 discharge if you refused to resign.

14 Could you tell me just so we have  
15 it in the record when you feel that you were  
16 threatened with discharge? You've told me about  
17 the letters and your conversation with Mayor  
18 Crean.

19 A. That was in the telephone  
20 conversation.

21 Q. With Mayor Scanlon?

22 A. With Mayor Scanlon. He told me if I  
23 didn't resign that he would not keep me in the

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1 position.

2 Q. Other than your telephone conversation  
3 with Mayor Scanlon which I believe you testified  
4 occurred in December of 2003 -- would that be  
5 the correct year?

6 A. I've got to get this straight in my  
7 head. I think it was December of 2003.

8 Q. Is there anything you'd like to look  
9 at that could refresh your recollection as to  
10 the date?

11 A. No. I now believe it was in December  
12 of 2003.

13 Q. Other than that conversation was there  
14 anything else that you felt threatened you with  
15 discharge if you refused to resign the position?

16 A. No.

17 Q. In paragraph forty there's an  
18 allegation that the defendant has implemented  
19 employment policies and practices which are  
20 arbitrary, capricious and discriminatory.

21 Could you explain what you mean by  
22 that allegation?

23 MR. SHAPIRO: Other than from  
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1 information from your attorneys of course.

2 MS. CORBO: I'm not interested in  
3 any conversations you have had with your  
4 attorney or any advice that your attorney has  
5 given you.

6 A. I believe that Mayor Scanlon did not  
7 have the power under our city's charter to  
8 terminate my employment with the City of  
9 Beverly. And by doing so I think that he was  
10 arbitrary and capricious.

11 Q. You also allege as part of your  
12 complaint gender discrimination. Could you tell  
13 me why you feel you have been discriminated  
14 against on the basis of your gender?

15 A. Where is that?

16 Q. I'm sorry.

17 MR. SHAPIRO: Counsel, let me  
18 indicate on the record that we're planning to  
19 waive that claim of gender and age  
20 discrimination.

21 MS. CORBO: Why don't we in  
22 regards to the allegation of gender and age I'll  
23 suspend this deposition and not ask any  
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1 questions regarding those complaints.

2 MR. SHAPIRO: We'll file documents  
3 that reflect what I just told you.

4 MS. CORBO: And if for some reason  
5 they're not filed I reserve the right to recall.  
6 I'll withdraw the last question to Miss  
7 Atherton.

8 Q. Could I direct you to page four,  
9 paragraph twenty-one?

10 A. Paragraph what?

11 Q. Paragraph twenty-one on page four.  
12 That paragraph states that you understood you  
13 would continue to be employed by the City of  
14 Beverly as long as your actual job performance  
15 was satisfactory. I'm paraphrasing a little bit  
16 there.

17 The question I'm going to ask you  
18 regarding that paragraph is, what basis in fact  
19 did you have for understanding that you would  
20 continue to be employed by the City of Beverly  
21 as long as your performance was satisfactory?

22 A. Because the City charter stated that  
23 the Mayor could terminate department heads and  
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1 city officers. I was neither a city officer or  
2 department head. And I understood that I was  
3 protected by the charter under Section 815 which  
4 said I could only be removed for cause. And I  
5 didn't believe that the city had cause.

6 Q. Was there anything else besides the  
7 charter that you relied upon in believing that  
8 your employment would continue as long your job  
9 performance was satisfactory?

10 A. I think that was the main reason.

11 Q. Miss Atherton, I'd like to show you  
12 another document if I may. If you could tell me  
13 whether or not you recognize that document?

14 A. These are the Answers to  
15 Interrogatories that I answered. Yes, I do.

16 (Exhibit No. 5, Answers to  
17 Interrogatories; so marked.

18 A. I think mine is put together  
19 incorrectly. Page ten is my second.

20 (Discussion off the record.)  
21 (Short recess.)

22 Q. Miss Atherton, I'd like to direct your  
23 attention to page five of your Answers to  
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1 Interrogatories that have been marked as Exhibit  
2 Five. At the top of the page, and you might  
3 want to refer to page four which is the actual  
4 question, but it's a calculation regarding your  
5 pension.

6 At the top of page five could you  
7 tell me how you went about calculating -- what  
8 those numbers mean? Just break it down for me  
9 because I'm not totally clear on how you went  
10 about calculating your damages in relation to  
11 your pension.

12 A. The pension I'm receiving right now is  
13 based on an average salary of \$47,088.88 times  
14 my years of service which were 16.9 years times  
15 a factor that is used if you're over sixty-five.

16 So if you're over sixty-five years  
17 of age it's .025 times your average salary over  
18 three years, times your years of service. And  
19 that is how I computed the calculation of my  
20 pension which is \$19,914.72.

21 It was my intention, if I had had  
22 the opportunity, to work at least another three  
23 years. I had chosen the figure of the years of

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1 twenty years as what I would liked to have  
2 worked. And the next figure is the difference  
3 by the calculation using twenty years instead of  
4 16.9 years which would have been \$326  
5 approximately every month for the rest of my  
6 life.

7 I just used the fifteen years life  
8 expectancy because of my family's history of  
9 longevity. My mother is ninety-five and she's  
10 still alive. Her sister is ninety-one and she's  
11 still alive.

12 Q. The current pension that you're  
13 receiving --

14 A. The pension is 19,914.72.

15 Q. Thank you. That figure, is that based  
16 upon a salary that includes the \$5,000 stipend  
17 and the \$3,000 stipend?

18 A. Yes.

19 Q. So currently that's factored into your  
20 retirement?

21 A. Yes.

22 Q. So that is not an issue that's in  
23 dispute in terms of your retirement?

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1 A. No.

2 Q. In terms of your damages, Miss  
3 Atherton, one of the things that you allege is  
4 that you've suffered emotional distress as a  
5 result of the alleged actions of the City.

6 Can you tell me what type of  
7 emotional distress or how you suffered emotional  
8 distress? Can you describe that for the record?

9 A. I have a history of Irritable Bowel  
10 Syndrome and in times of emotional stress that  
11 condition is always worse. So when the Mayor  
12 called and told me that he was not going to keep  
13 me in the position it was like somebody punched  
14 me in the stomach and there was a pain in my  
15 stomach that would not go away.

16 So I have suffered with this  
17 condition. I have had sleepless nights. I have  
18 actually really changed my whole life because of  
19 this. I don't even shop in the same stores I  
20 shopped in because I don't want to run into  
21 people that I know and constantly have to go  
22 over this and what I thought about it, what I  
23 thought of the Mayor.

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1 So I have given up all of my  
2 positions that I worked for throughout the City.  
3 I resigned from everything. I've kind of gone  
4 into a mode of a cocoon with my family and  
5 staying close to home and staying close to my  
6 family and not really having much to do outside  
7 of my home life whereas before I was very much  
8 involved with city politics.

9 I went to all the Alderman's  
10 fundraisers. I participated in their campaigns.  
11 I gave to their campaigns. I was involved with  
12 the City of Beverly historians. I was the  
13 historian for my church. I resigned from that.  
14 I resigned from the group of the City of Beverly  
15 that was part of that historian group. And I  
16 kind of just pulled myself in and decided to  
17 just stay home, stay close to my family and try  
18 not to do anything or go anywhere that would  
19 cause me any other additional anxiety.

20 I didn't want to bump into the  
21 Mayor. I didn't want to bump into people that  
22 were part of his group. I just really had a  
23 very bad time.

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1 Q. When you say that you resigned from  
2 everything, you're currently still a member of  
3 retirement board?

4 A. Right.

5 Q. What are you referring to, what  
6 exactly did you resign from?

7 A. I resigned as the historian of my  
8 church. I resigned as a member of the -- I  
9 forget what it's called. It's a group that  
10 meets throughout the City of Beverly to -- it  
11 has to do with historic documents and papers. I  
12 can't think of the name of it right now. That's  
13 two that I can think of that I was on at the  
14 time.

15 Q. Those resignations were directly as a  
16 result of the City's actions?

17 A. I felt that way. I just didn't want  
18 to serve anymore on anything. I just didn't  
19 want to be out where people were and asking me  
20 what was going on. I just tried to stay close  
21 to home.

22 Q. Do you reside for part of the year in  
23 Florida?

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1 A. Yes.

2 Q. What months are you in Florida  
3 typically?

4 A. Usually December -- usually three  
5 months, December, January and February.

6 Q. For the remainder of the year do you  
7 make any trips down to Florida?

8 A. No.

9 Q. Do you own property in Florida?

10 A. Yes.

11 Q. What type of property do you own? Is  
12 it a house?

13 A. It's a small villa in a condo type  
14 environment.

15 Q. Where in Florida is that?

16 A. In Venice.

17 Q. Did your resignations have anything to  
18 do with the fact that you spend part of your  
19 year in Florida?

20 A. No. That wouldn't have made any  
21 difference.

22 Q. You also stated that you have some  
23 anxiety. Do you have a history of anxiety?

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1 A. Yes.

2 Q. When does that date back to?

3 A. Oh God, twenty years probably.

4 Q. Do you feel that your anxiety was  
5 heightened as a result of this?

6 A. Definitely. No doubt in my mind.

7 Q. If you can give me some examples, how  
8 did that manifest itself, that heightened  
9 anxiety?

10 A. Sleeplessness, diarrhea, nausea, no  
11 appetite. Actually I think I was in a  
12 depression.

13 Q. Was that ever diagnosed by anyone?

14 A. Some time since I've retired from the  
15 city I have started taking a medication which is  
16 for depression.

17 Q. What medication is that?

18 A. I believe it's called Celexa.

19 Q. Who prescribed that for you?

20 A. My general practitioner.

21 Q. What's his or her name?

22 A. His name was Doctor Robert Oliverio.

23 Q. Do you recall when you first started

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1 taking Celexa?

2 A. I believe it was probably in 2005.  
3 It's just a guess. I'm still on it now.

4 Q. Is there anything else that was going  
5 on in your life that may have triggered these  
6 feelings of depression?

7 A. Absolutely not.

8 Q. At some point in time did you have a  
9 concern about a breast cancer scare or breast  
10 lump?

11 A. Yes, I did. I had that either in -- I  
12 think that was 2005 too.

13 Q. Could that have had anything to do  
14 with your feelings of depression?

15 A. I don't think so. I had two other  
16 lumps removed from my breasts in the past and  
17 they were both benign. I felt very confident  
18 that the lump would not be cancer.

19 Q. When was that finally resolved or has  
20 it been resolved?

21 A. Yes.

22 Q. Was it in fact cancer?

23 A. No.

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Q. I'm glad to hear that. Have you ever treated with a psychologist or a mental health professional?

A. No.

Q. Any other medications that you currently take?

A. I believe the medications that I'm on every day is Lipitor which controls high cholesterol in the blood. I take the Celexa every day and I have a generic of Xanax that's prescribed to me to be used at my own discretion.

Q. How long have you taken the Lipitor to the best of your recollection?

A. A long time. I would guess five years.

Q. And the Xanax?

A. Probably ten years.

Q. Miss Atherton, if I could direct your attention to page nine of what's been marked as Exhibit Five, your responses to the interrogatory requests.

A. What number?

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Q. I'm sorry. Page nine, number seventeen.

A. Okay.

Q. You list in response to my question about individuals that may have information relevant to the allegations, members of the League of Women Voters. Is there anyone specific that you're referring to?

A. I believe that two members -- unfortunately one of them just passed away. Her name was Veta Comish. I'm not sure how to spell her last name. She just died.

There were always two members of the league that attended all the ordinance review committee meetings. They were overseeing the ordinance review committee trying to understand why the ordinances had not been implemented since it was the League that did the initial charter, sort of like a -- something they were working on for the City's charter.

So they had actually prompted the creation of the charter commission. I believe

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they were the group that obtained the signatures that were required in order to have a charter commission in the City of Beverly.

Q. Are there any specific individuals that you feel would have knowledge relative to this complaint?

A. I think -- let's see. I can't think of her last name right now. There was a woman that attended most of these ordinance reviews. Her first name is Mary but I can't think of her last name right now.

Q. If you think of that information if you can send it through your attorney?

A. Mary Roderick. She attended all those meetings.

Q. At the top of your list, members of the Beverly Charter Commission. Could you tell me who you feel would be relevant in that regard?

A. I think as far as the provisions in the charter and the provisions that I'm relying on that my job was not subject to termination by the Mayor, that some of the members of the

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Charter Commission would remember the conversations that we had concerning how people could be terminated.

Q. Do you know who specifically you're referring to because I'm not sure who made up the charter commission so I'm asking if you know of any specific individuals?

A. Well, I'm trying to remember who was on there, who's still around. Mary Grant was a member of the Charter Commission and is still around, Timothy Flaherty who is now a Councillor of the City. Some of them have moved away or gone away or passed away. Those are two that I can think of who are still around and involved in politics and would have knowledge of the charter.

Q. Members of the City Council at the time you're referring to which it looks like when the ordinances were first enacted?

A. Right.

Q. Do you know who was on the City Council at that time?

A. I believe most of members that are

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1 still on the Council were there in 96 and 97.

2 Q. So that would be the timeframe of 1996  
3 and 1997?

4 A. Right.

5 Q. Members of the Ordinance Review  
6 Commission, do you recall any specific  
7 individuals that you feel would provide  
8 testimony regarding the allegations in your  
9 complaint?

10 A. These were City Councillors. The  
11 members of the Ordinance Review Commission were  
12 five members of the City Council.

13 Q. Anyone else?

14 A. No.

15 Q. What year, if I wanted to find out who  
16 was on the City Council that was on the  
17 Ordinance Review Commission?

18 A. In 2001 when I was working with the  
19 Council to draft these ordinances I believe it's  
20 the same people who are the Councillors right  
21 now.

22 Q. Do you know where -- is there a  
23 document or anything that I could look to find

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1 out who was on the Ordinance Review Commission?

2 A. Can I speak to Mr. Shapiro?  
3 (Discussion off the record).

4 MR. SHAPIRO: We have suggested  
5 that the plaintiff and Counsel will attempt to  
6 give some names of these various members that  
7 may have information and will be helpful. And  
8 we'll try to provide that in the next week or  
9 so.

10 Q. On page eleven, Miss Atherton, on  
11 what's been marked as Exhibit Five, your Answers  
12 to Interrogatories, at the top of the page,  
13 number twenty-one is a question asking you to  
14 state any facts that you believe support your  
15 allegation that Mayor Scanlon acted  
16 intentionally, willfully, maliciously,  
17 recklessly and with gross disregard of your  
18 rights.

19 Your answer refers to Mayor  
20 Scanlon's deposition testimony. At the time  
21 your complaint was filed Mayor Scanlon at that  
22 time had not been deposed. Is there anything  
23 other than Mayor Scanlon's deposition that you

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1 believe supports your allegation that he  
2 intentionally, willfully, maliciously,  
3 recklessly and with gross disregard of your  
4 rights acted in a manner inconsistent with your  
5 rights?

6 MR. SHAPIRO: Objection, but see  
7 if you can answer.

8 A. I would just say that his  
9 intentionally firing me from a City position  
10 that I had been employed for almost seventeen  
11 years was certainly in gross disregard of my  
12 rights because I believed that I and I still  
13 believe to this day that he did not have the  
14 power to terminate my employment.

15 Q. Finally, Miss Atherton, on page  
16 twelve, there's a question about whether or not  
17 you would return to the position of executive  
18 confidential secretary. Can you tell me whether  
19 or not you would and if so under what  
20 conditions?

21 A. Yes, I would accept a position if it  
22 paid close to what I was earning and if it was  
23 something that I'm trained for. But I would

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1 want all my back pay for the past years.

2 Q. Other than the salary being close to  
3 what you were previously earning and you being  
4 able to have training for the position or being  
5 qualified for the position, any other conditions  
6 for you to return to the position of executive  
7 confidential secretary?

8 A. I would still want all the same  
9 benefits and same rights I had.

10 Q. Sure.

11 MS. CORBO: All right. Could I  
12 have five minutes?

13 (Short recess).

14 MS. CORBO: I don't have any  
15 further questions for Miss Atherton so I will  
16 put it over to you.

17 MR. SHAPIRO: No further questions  
18 for me.

19 (The deposition was suspended at  
20 1:03 p.m.)

21  
22  
23

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CERTIFICATE

STATE OF MASSACHUSETTS  
COUNTY OF PLYMOUTH

I, Carolyn McGill, a Notary Public in  
and for the State of Massachusetts, do hereby  
certify that the foregoing transcript of the  
deposition of Crystal A. Atherton, having been  
satisfactorily identified and duly sworn by the  
Notary Public, on Tuesday, October 16, 2007, is  
true and accurate to the best of my knowledge,  
skill and ability.

IN WITNESS WHEREOF, I have hereunto set  
my hand and seal this 16th day of October, 2007.

---

Carolyn McGill

My commission expires:  
April 21, 2011

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